

KAMD200000142020



Presented on : 13-01-2020
Registered on : 14-01-2020
Decided on : 23-04-2026
Duration : 6 years, 3 months, 10 days

**IN THE COURT OF THE I ADDITIONAL SENIOR
CIVIL JUDGE AND J.M.F.C., KRISHNARAJAPETE.**

:PRESENT:

SRI. DEVARAJU.H.R. BA., LLB.,
I ADDL.SENIOR CIVIL JUDGE AND JMFC,
K.R.PETE.

DATED THIS THE 23rd DAY OF APRIL-2026

R.A. No.02/2020

Appellants/s
(Plaintiff/s
OS. 292/2009

: Sri. Ningegowda
(Dead by his Lrs)

1. Sri. Nagegowda
S/o Late Ningegowda
aged about 50 years,
2. Smt. Gowramma
W/o late Ningegowda
aged about 70 years,
3. Smt. Kannalamma
W/o Late Khanthegowda
aged about 67 years,
R/o Uhigondanahalli village
Bilikere hobli,
Hunsur Taluk,
Mysuru district.
4. Smt. Lakshamamma
W/o Nagegowda,

aged about 65 years,

A-No. 1, 2 and 4 are
R/o Alambodikaval village,
Akkihebbal hobli,
K.R.Pete taluk,
Mandya district.

5. Smt. Sakamma
W/o Swamygowda
aged about 62 years,
R/o Pura village,
Akkihebbal hobli,
K.R.Pete taluk,
Mandya district.

6. Smt. Gayathramma
W/o Krishnegowda
aged about 60 years,
R/o Muduguppe village,
Mirle hobli,
K.R.Nagara taluk,
Mysuru district.

(By.Sri.**GKS.**, Adv)

V/s

Opponent/s
(Defendants
in OS 292/2009

: 1. Smt. Sarojamma
W/o Late Chikkegowda,
aged about 40 years,

2. Sri. Shivannegowda
W/o late Kalegowda,
aged about 50 years,

3. Sri. Revanna
S/o Late Kalegowda
(Dead by LRs)

3(a) Smt. Vishalakshamma
W/o Late Revanna
aged about 50 years,

3(b) Sri. Shekara
S/o late Revanna
aged about 27 years,

3(c) Smt. Hema
D/o Late Revanna
aged about 25 years,

3(d) Smt. Ranjitha
D/o Late Revanna
aged about 23 years,

3(e) Sri. Dineshkumar
S/o Late Revanna
aged about 20 years,

All are R/o
Alambodikaval village,
Akkihebbalu hobli,
K.R.Pete taluk,
Mandya district.

(By. Sri.**BCD.**, Adv.,)

Date of institution of the Appeal	13.01.2020
Nature of the suit/Appeal	Prays to call for the records in O.S. No.292/2009 (DD.13.11.2019) from the Hon'ble Addl.Civil Judge and JMFC., K.R.Pete and set aside the Judgment and decree dated 13.11.2019.
Date of the nature of the decree	Judgment and decree dated 13.11.2019 passed by Hon'ble Addl.Civil Judge and JMFC., K.R.Pete, in O.S. No.292/2009 for the relief of Partition and Separate Possession.
Date of judgment	23.04.2026

Total Duration	Year/s	Month/s	Day/s
	06	03	10

(DEVARAJU H.R.)
I ADDL.Sr.C.J & J.M.F.C.
K.R.Pete.

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J U D G M E N T

This appeal filed by the appellants by challenging the correctness of the judgment and decree dated 13.11.2019 passed by the Hon'ble Addl. Civil Judge and JMFC, K.R.Pete in O.S. No.292/2009.

2. The present appellants were the legal heirs of plaintiff, the present respondents were the defendants in original suit before the trial court. For sake of convenience the parties to the proceedings will be referred as per their rankings before the trial court.

3. The facts leading up to this appeal are as follows:
The original plaintiff has filed suit for partition and separate possession of his legitimate ½ share in the suit schedule properties and such other reliefs court deems fit to grant under the facts and circumstances of the case.

4. It is the case of the plaintiff that, propositus Sri. Kalegowda @ Thammadigowda had 2 sons namely Sri. Kalegowda and Sri. Ningegowda, who is the original plaintiff herein. Sri. Kalegowda S/o Kalegowda had 4 children namely Sri. Chikkegowda, Smt. Sarojamma, Sri.

Shivannagowda and Sri.Revanna. Among them Sri. Chikkegowda and Sri. Revanna were died. Legal heirs of Sri. Revanna brought on record as defendant No.3(a) to (e). The defendant No.1 is the wife of Sri.Chikkegowda, who is the elder brother of defendant No. 2 and 3. Father of the deceased plaintiff namely Sri. Kalegowda @ Thammadigowda died long back. Father of the plaintiff and defendant No. 2 and 3 by name Sri. Kalegowda @ Thammadigowda acting as kartha of the joint family. The suit schedule properties are the ancestral and joint family properties of deceased plaintiff and defendants. The suit schedule properties are standing in the name of father of the plaintiff's namely Sri. Kalegowda @ Thammadigowda.

5. The plaintiff further submits that, suit schedule properties are the ancestral and joint family properties of plaintiff and defendants, they are all coparcener of the joint family and they are in joint possession of the properties as Hindu Undivided Joint family members, as such plaintiffs and defendants are entitled their equal share in all the suit schedule properties. The defendants have colluded with each other and created revenue documents in their names in order to deprive the legitimate share of the plaintiff over the suit schedule properties. The suit schedule properties are yields very good income. But the defendants are misusing the joint family income and funds for their self expenses and they are also having intention to deprive the

rights of the plaintiff over the suit schedule properties. The defendants colluded with each other and trying to alienate the suit schedule properties. Hence, he has filed present suit for partition and separate possession of his $\frac{1}{2}$ share in the suit schedule properties. Under these backgrounds, plaintiff sought for decreed the suit.

6. After registration of the suit, suit summonses were issued against the defendants. The defendant No. 2 put his appearance before the trial court through his counsel Sri. KRG and filed his detailed written statement.

7. During pending of the suit defendant No.3 died. Hence, his legal heirs brought on record as defendant No.3(a) to (c). The defendant No.2 has filed his detailed written statement by admitting their relationship with the plaintiff as alleged in the plaint. However, he has denied the fact that, suit schedule properties are ancestral and joint family properties of plaintiff and defendants as false.

8. Further defendant No.2 has contended that propositus Sri. Ningegowda had 2 children namely Sri. Kalegowda and Sri.Beeregowda, who died long back. The 1st son Sri.Kalegowda had children namely Sri. Kunta Kalegowda @ Thammadigowda, 2nd Marikullegowda @ Ningegowda among them 1st son Sri. Kalegowda @ Thammadigowda died leaving behind his daughters namely Smt. Prameela, Smt. Kamma and Sri. Mahadeva as his legal heirs. Sri. Beeregowda died leaving behind his wife Smt. Boramma

and his 3 children, 1st son Sri. Kuntakalegowda @ Thammadigowda had children namely Sri. Chikkegowda, Sri. Shivegowda and Sri. Revenna. Among them Sri.Chikkegowda died leaving behind his son and wife as his legal heirs.

9. The suit schedule property bearing Sy. No. 225 measuring 2 acre of Alambadi Kavalu village and property bearing Sy. No. 228 measuring 2 acre and property bearing Sy. No. 289 measuring 4 acre originally belongs to Sri.Ningegowda. Hence, his sons namely Sri.Kalegowda and Sri.Beeregowda have inherited the said properties. The said properties orally divided among the sons of propositus Sri. Ningegowda. Accordingly, 1st son had acquired the property measuring 1 acre in Sy. No. 225, measuring 1 acre in Sy. No. 228 and measuring 2 acre in Sy. No. 289 and 2nd son Sri.Beeregowda had acquired property, measuring 1 acre bearing Sy. No.225 of Alambadikavalu village, Akkihebbalu hobli, K.R.Pete taluk, Mandya district.

10. The defendant No.2 has further contended that, wife of Sri.Beeregowda namely Smt. Boramma and his children Sri.Mahadeva, Smt. Prameela and Smt. Kamma have filed a suit for declaration in O.S. No. 95/2006 on the file of Hon'ble Senior Civil Judge & JMFC, K.R.Pete against the properties, which fallen to the share of Sri.Beeregowda, said suit was decreed on 11.08.2009. In said suit plaintiff

has been admitted oral partition, which had taken place between the members of joint family.

11. The defendant No. 2 has further contended that, his father Sri. Kalegowda and his brother Sri.Kuntakalegowda @ Thammadigowda was in possession of properties fallen to the share of his father Sri. Kunta Kalegowda @ Thammadigowda. Accordingly, sons of Sri.Kalegowda have divided the properties among themselves. The item No. 2 of the property has been granted in favour of his father through ADR No. 42/1964-65, accordingly, katha has been mutated into his name as per M.R. No. 47/1998-99, said property was in possession of his father. After his demise his family members are in possession of the said property. Hence, suit filed by the plaintiff is not maintainable and liable to be dismissed. By contending so, prays for dismiss the suit.

12. Upon considering the rival contentions raised by the parties, Hon'ble trial court has framed the following issues and additional issues.

ISSUES

1. Whether the plaintiff proves that the suit schedule properties are the ancestral joint family properties of him and the defendants?

2. Whether the plaintiff further proves that the suit schedule

properties are liable to be divided and he is entitled for half share over the same?

3. Whether the 2nd defendant proves that already suit schedule properties have been partitioned and respective shares were enjoying separately as contended in para 6 of the written statement?

4. What order or decree?

ADDITIONAL ISSUES

1. Whether the plaintiff is entitled for an enquiry as to mesne profits and accounts?

13. The plaintiff in order to prove his contention, the GPA Holder of the plaintiff himself has examined before the trial court as PW-1 and furnished 06 documents as per Ex.P1 to Ex.P6. On the other hand defendant No.2 has examined before the trial court as DW-1. He fails to offer himself for his cross examination by other side. Hence, evidence of defendant No.2 is discarded by the Hon'ble trial court as per order dated 01.07.2019.

14. After appreciating both oral and documentary evidence on record the Hon'ble trial court has passed the judgment and answered the issue No.1 and 2 partly in the

affirmative, Issue No.3 and Additional Issue No.1 in the **Negative**, and **Partly decreed** the suit.

15. Note: The Hon'ble trial court has dismissed the claim of the plaintiffs with respect to item No.2 of the property. Hence, plaintiffs have preferred this appeal on the following grounds.

GROUND

1. The Hon'ble trial court fails to consider the real dispute between the parties and Hon'ble trial court did not consider the Genealogy furnished in the plaint and documents furnished by the plaintiffs.

2. The Hon'ble trial court committed error in dismissing the claim of the plaintiff against the item No. 2 of the property without examining the facts of the case.

3. Hence, judgment and decree suffered from sound reasoning and it is illegal. Hence, prays for decreed the suit with respect to item No 1 to 4 of the properties.

4. Among on other formal grounds appellants pray for allow the appeal and decreed the suit.

16. After registration of the appeal, notice has been issued against the respondent No.1, 2 and respondent

No. 3(a) to (c). They put their appearance through their counsel Sri.BCD. Trial court record secured.

17. Heard both sides on merits. Perused the available materials on record.

18. The points for arises for my consideration are as follows: -

POINTS

1. Whether the plaintiff proves before the Hon'ble trial court that, suit schedule item No. 2 of the property is also joint family property and he is also entitled for his legitimate share in the suit schedule item No.2 of the property?

2. Whether the findings recorded by the Hon'ble trial court on various issues are correct?

3. Whether the judgment passed by the trial court call for interference by this court?

4. What order or decree?

19. Now my answers to above points are as Under:

Point No.1 : **In the Negative,**

Point No.2 : **In the Affirmative,**

Point No.3 : **In the Negative,**

Point No.4 : **As per the final**
order for the following:

REASONS

20. Point No.1 to 3:-These points are inter linked with each other, hence, they are taken up together for common discussion in order to avoid the repetition of the facts and evidence.

21. It is the case of the plaintiff that, suit schedule properties are ancestral and joint family properties of himself and defendants. The said properties originally belongs to Sri.Kalegowda @ Thammadigowda. Hence, plaintiffs and defendants are entitled for their ½ share in all the suit schedule properties. Hence, he has filed present suit.

22. As already stated above, the Hon'ble trial court has dismissed the suit with respect to item no. 2 and decreed the suit with respect to remaining properties and Hon'ble trial court held that, item No. 2 of the property is self acquired property of Sri.Kalegowda @ Thammadigowda. As the defendants have not filed any cross objection I confined strictly to the nature and status of the item No. 2 of the suit schedule property. Keeping this point, I proceed to discuss on evidence adduced by the plaintiffs before the trial court.

23. As already stated above, GPA holder of the plaintiff has examined himself as PW-1 and furnished 06 documents as per Ex.P1 to Ex.P6. Plaintiff has furnished RTC extract of the item No. 1 of the property bearing Sy. No. 288 of the property as per Ex.P1, wherein it appears that Sri. Kalegowda S/o Lingegowda had acquired the property under sale. The Ex.P3 shows also that property bearing Sy. No. 225/P2, which is item No. 1 of the property is also standing in the name of father of the plaintiff. The Ex.P5 is the RTC extract of the property bearing Sy. No. 289, which is item No. 4 of the property this property is also standing in the name of plaintiff father Sri.Kalegowda S/o Ningegowda.

24. On perusal of the documents furnished by the plaintiff it appears that item No.1, 3 and 4 are standing in the name of his father Sri. Kalegowda S/o Ningegowda.

25. As already stated above Hon'ble trial court has dismissed the suit with respect to item No.2 of the property. Hence, I proceed to discuss on evidence adduced by the plaintiff with respect to item No. 2 of the property.

26. The Ex.P4 is the RTC extract of the property bearing Sy. No. 286, measuring 4 acre 30 guntas of Alamabadikavalu village. This RTC extract indicates with revenue entries were mutated in the name of

Sri.Kalegowda @ Thammadigowda during the year 1964-65. The learned counsel for the plaintiff has argued that, this grant was made in favour of Sri.Kalegowda @ Thammadigowda, on behalf of the joint family as he was manager of joint family. Hence, he prays for allow the appeal.

27. On the other hand defendant No.2 has contended in his written statement that, item No.2 had acquired by his father on his individual capacity. Hence, said property is self acquired property of his father Sri.Kalegowda @ Thammadigowda. Hence, he sought for dismiss the suit.

28. As already stated above though defendant No. 2 has examined before the trial court as DW-1. His evidence is discarded as per order dated 01.07.2019. However, burden heavily lies on the plaintiff to prove that item No.2 of the property is also joint family property.

29. The plaintiff has furnished Genealogy, wherein it appears that, Sri.Kalegowda @ Thammadigowda, is the son of Sri. Kalegowda and Smt.Channamma and elder brother of plaintiff herein. As already stated above the Ex.P4 shows that property has been granted in favour of Sri.Kalegowda @ Thammadigowda S/o Kalegowda.

30. It is interesting to note that, plaintiff in his plaint never pleaded that, suit schedule item No. 2 of the

property is granted in favour of Sri.Kalegowda @ Thammadigowda on behalf of joint family. I gone through the plaint carefully, at para No.1 of the plaint, plaintiff pleaded his father name as Sri.Kalegowda @ Thammadigowda, said Sri. Kalegowda @ Thammadigowda had 2 sons namely Sri.Kalegowda and plaintiff namely Sri. Ningegowda herein. To this contrary on perusal of the Ex.P2 pedigree shown that, Sri.Kalegowda @ Thammadigowda is the son of Sri. Kalegowda and elder brother of plaintiff herein. There is no explanation given by the plaintiff with respect to this discrepancy in the plaint and documents.

31. I carefully gone through the cross examination of PW-1. The PW-1 in his cross examination has deposed that, item No. 2 of the property bearing Sy. No. 286 granted in favour of his father by way of darakasthu. But he did not file any documents in order to establish that, said property has been granted in favour of his father namely Sri.Kalegowda.

32. Further in his cross examination he deposed that, brother of his grand father namely Sri. Beeregowda and his grand father have divided the property. Smt. Boramma and Sri.Beeregowda and family members have filed suit with respect to item No. 1, 3 and 4. PW-1 has clearly admitted the same. Hence very admission of the PW-1 it appears that if this property granted in favour of

his father namely Sri. Kalegowda, they would have file suit against item No. 2 of the property also. The plaintiff himself pleaded in cause title of the plaint that defendant No.2 is the son of Sri.Kalegowda @ Thammadigowda.

33. It is pertinent to note that, I carefully gone through the plaint and amended plaint in original suit. The plaintiff pleaded name of the father of the defendant No. 2 as Sri.Kalegowda @ Thammadigowda in original plaint. But in amended plaint he shows father name of the defendant No. 2 as Sri.Kalegowda. The conduct of the plaintiff create doubts on the grant of the property in favour of grand father of the plaintiffs herein. Hence, on over all perusal of the oral and documentary evidence on record it appears that item No.2 of the property has been granted in favour of Sri.Kalegowda @ Thammadigowda, son of Sri. Kalegowda, who is the father of the defendant No.2 herein. The plaintiffs have not furnished any documents in order to show that item No.2 of the property is also granted in favour of Sri. Kalegowda @ Thammadigowda.

34. I gone through the judgment of the Hon'ble trial court. The Hon'ble trial court rightly come to conclusion that item No. 2 of the property is separate/self acquired property of Sri. Kalegowda @ Thammadigowda by relying the Article 228 of Mulla Hindu Law.

35. I have carefully perused the judgment passed by the Hon'ble trial court and I am of the opinion that, Hon'ble Trial court has analyzed and appreciating the materials available on record in proper perception and also given the correct findings on the issues framed in the original suit. Hence, I conclude that the judgment of the Hon'ble Trial court does not call for any interference by this court. Hence, I hold Point No.1 and 3 in the **Negative** and Point No.2 in the **Affirmative**.

36. Point No.4: In view of my findings to above points I pass the following:-

ORDER

The appeal filed by the appellants U/order 41 Rule 1 R/w/sec.96 of CPC questioning the correctness of the judgment passed by the Hon'ble Addl. Civil Judge & JMFC., K.R.Pete in O.S. No.292/2009 dated 13.11.2019 is hereby dismissed.

Consequently, the impugned judgment and decree dated 13.11.2019 passed in O.S. No.292/2009 by the Hon'ble Addl. Civil Judge and JMFC, K.R.Pete is hereby confirmed.

Draw decree accordingly.

**Transit copy of the judgment to the
trial court along with entire records
forthwith.**

(This judgment is dictated to the stenographer directly computerized by her, corrected and then pronounced by me in the open court on 23rd day of April-2026)

(DEVARAJU H.R.)
I Addl.Sr.CJ & J.M.F.C.,
K.R.Pete.

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