

KAMD200004442025



Presented on : 26-03-2025

Registered on : 02-04-2025

Decided on : 04-04-2026

Duration : 1 years, 0 months, 9 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 04th DAY OF APRIL-2026**R.A. No.24/2025**

Appellants/s : 1. Sri. Nanjegowda
(Defendant/s S/o Late Bettegowda,
in O.S. 233/2020) aged about 75 years,

2. Smt. Geetha
D/o Nanjegowda,
aged about 35 years,

Both are R/o
Jaginakere village,
Santebachahalli hobli,
K.R.Pete taluk,
Mandya district.

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

V/s

Respondent/s : 1. Smt. Javaramma
(Plaintiff/s W/o Late Rajegowda,
in OS 233/2020) aged about 60 years,

2. Smt. Reetha
W/o Purushothama

aged about 27 years,

Both are R/o
Jaginakere village,
Santebachahalli hobli,
K.R.Pete taluk,
Mandya district.

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

Date of institution of the Appeal	26.03.2025		
Nature of the suit/Appeal	Prays to call for the records in O.S. No. 233/2020 (DD.31.01.2025) from the Hon'ble II Addl. Civil Judge and JMFC., K.R.Pete and set aside the Judgment and decree dated 31.01.2025.		
Date of the nature of the decree	Judgment and decree dated 31.01.2025 passed by Hon'ble II Addl. Civil Judge and JMFC., K.R.Pete, in O.S. No.233/2020 for the relief of Partition and Separate Possession.		
Date of judgment	04.04.2026		
Total Duration	Year/s	Month/s	Day/s
	01	00	09

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

J U D G M E N T

This appeal has filed by the appellants by challenging the correctness of the judgment and decree dated 31.01.2025 passed by the Hon'ble II Addl. Civil Judge and JMFC, K.R.Pete in O.S. No. 233/2020.

2. The present appellants were the defendants and the present respondents were the plaintiffs 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 plaintiffs have filed suit for partition and separate possession of their legitimate 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 plaintiffs that, propositus namely Sri. Bettegowda and his wife Smt. Kempamma had three children namely Sri. Rajegowda, Sri. Nanjegowda and Smt. Lakshamma, who died as issue less. Sri. Rajegowda died on 15.01.1999 leaving behind him the plaintiffs as his legal heirs. The Propositus Sri.Bettegowda and his wife Smt. Kempamma died long back leaving behind them husband of the plaintiff No.1 and defendant No.1 as his legal heirs. There is no partition effected between the deceased Sri.Rajegowda and defendant No.1. Hence, they are living in the joint family.

After the demise of Sri. Bettegowda, defendant No.1 looking after the affairs of the joint family. Even after demise of Sri.Rajegowda, there is no partition effected between the plaintiffs and defendant No.1. The suit schedule properties are ancestral properties of plaintiffs and defendant No.1, suit schedule properties are managing by the defendant No.1 and he is receiving the income from the suit schedule properties. The defendant No.1 has given some suit schedule properties to the 2nd defendant through Gift Deed without knowledge of the plaintiffs. The defendant No.1 does not have right to transfer some of the properties through Gift Deed as the suit schedule properties are the ancestral and joint family properties. Since the document have been created in the name of defendant No.2, he has been made a party to the suit as he is a necessary party.

5. The plaintiffs further submit that, katha of the suit schedule properties is standing in the name of defendant No.1. Hence, he is trying to sell the suit schedule properties to the 3rd party. The plaintiff No.1 is uneducated, she was leaving with her husband at Bengaluru. The defendants have colluded with each other and created the documents into their names with an intention to defraud the plaintiffs' share in the suit schedule properties. Hence, plaintiffs have demanded the defendants to effect partition and allot their legitimate share in the suit schedule properties. But they refused to allot their legitimate share in the suit schedule

properties. Hence, they have filed present suit for partition and separate possession of their legitimate $\frac{1}{2}$ share in the suit schedule properties.

6. After registration of the suit, the Hon'ble trial court has issued suit summonses to the defendants. The defendant No.1 and 2 have put their appearance through their advocate Sri. KNN. They have filed their written statement by admitting the relationship as alleged by the plaintiffs in their plaint. However, they have denied the rest of the allegations made by the plaintiffs that suit schedule properties are the ancestral properties of plaintiffs and defendants as false.

7. Further they have contended that, original propositus Sri. Thimmegowda had a son namely Sri. Bettgowda, said Sri. Bettgowda had a wife namely Smt. Kempamma. Said Sri. Bettgowda and Smt. Kempamma had children namely Sri. Rajegowda, who is the husband of the plaintiff No.1, Sri. Nanjegowda, who is the defendant No.1 and Smt. Lakshamma, mother of the defendant No.1 Smt. Kempamma is sole legal heir of her parents namely Sri. Basavegowda and Smt. Bettamma. Husband of the plaintiff No.1 namely Sri. Rajegowda separated from the joint family about 60 years ago. He had acquired the properties as his share that came from Sri. Basavegowda and Smt. Bettamma. The plaintiff No.1 and her husband Sri. Rajegowda had no children for about years. Hence, they have adopted one Sri. Ashoka S/o Venkategowda from the same village as their

son. After adopted one Sri.Ashoka, property which acquired by Sri.Rajegowda through his maternal parents bearing Sy. No. 67/3 measuring 23 guntas, in property bearing Sy. No. 85/1A measuring 45 guntas, property bearing Sy. No. 97/1C measuring 26 guntas and Sy. No. 38/7 measuring 1 guntas has been mutated into the name of adopted son of plaintiff No.1 and deceased Sri.Rajegowda as per M.R. No. 11/1994-95. At the time of adoption 2nd plaintiff was not born. If Plaintiffs have right over the property then they have to claim their rights over the properties of Sri.Ashoka not on the properties of defendants. Said Sri.Ashoka is necessary party to the suit. Hence, suit is liable to be dismissed as non joinder of necessary parties.

8. The defendants have further contended that, land measuring 1 acre 1 gunta in Sy. No. 55/1 and property measuring 66 guntas in Sy. No. 41 were sold out by the husband of the plaintiff No.1 namely Sri.Rajegowda to one Sri.Nanjundegowda @ K.Nanjundegowda through the registered sale deed. Since the said registered document are not available they will be presented henceforth, said Sri.Nanjeundegowda @ K.Nanjundegowda also called as Sri. K.Nanjundegowda. After the demise of Sri. Nanjundegowda katha has been mutated into the name of Smt. Jayamma, they had children namely Sri. Kumara, Sri.Nanjappa, Sri. Krishnappa, Sri.Nagesha and 2 daughters. They are also necessary parties to this suit. Plaintiffs are claiming partial

partition. Hence, suit is not maintainable. Plaintiffs have no rights, title, interest over the suit schedule properties. Hence, they are not entitled for any share as sought for. Hence, they pray for dismiss the suit.

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

ISSUES

1. Whether the plaintiff proves that the suit schedule properties are ancestral and joint family properties of plaintiffs and defendant No.1?

2. Whether the suit is bad for partial partition?

3. Whether the plaintiff is entitle for $\frac{1}{2}$ share in the suit schedule properties?

4. Whether the plaintiff is entitled for the relief of partition and separate possession?

5. Whether the plaintiff is entitled for the relief sought in the plaint?

6. What order or decree?

10. In order to prove the above issues the plaintiff No.2 has examined herself as PW-1 before the trial court and furnished 23 documents as per Ex.P1 to Ex.P23. On the

other hand defendant No. 1 has examined himself as DW-1 before the trial court and furnished 07 documents as per Ex.D-1 to Ex.D-7 and closed his side evidence.

11. Note: On perusal of the trial court records it appears that while cross examination of PW-1, learned counsel for the defendants has confronted a document to the PW-1. The PW-1 has admitted the contents of the document. Hence, said document got marked at Ex.D-1.

12. After appreciating both oral and documentary evidence on record the Hon'ble trial court has passed the judgment and answered the issue No.1, 3 to 5 in the **Affirmative**, Issue No.2 in the **Negative** and **decree** the suit. It is the judgment and decree that have been impugned in the appeal on the following:-

GROUND

1. The judgment and decree passed by the Hon'ble trial court is against to the law and material facts of the case.

2. The mother of the defendant No.1 namely Smt. Kempamma is the sole legal heir of her father Sri.Basavegowda @ Basavaiah. Hence, she had acquired the property measuring 23 guntas in Sy. No. 67/3, property measuring 45 guntas, in Sy. No. 85/A and property measuring 26 guntas in Sy. No. 97/C and 1 gunt in Sy. No. 3877.

Said properties had been allotted to the husband of the plaintiff No.1, after the said properties blended into the joint family. The plaintiff No.1 and her husband have no issues for a period of 25 years. Hence, they have adopted one Sri.Ashoka as son and transferred the properties which fallen to the share of husband of the plaintiff No.1 namely Sri. Rajegowda as per M.R. No. 11/1994-95. The plaintiff No.1 had admitted these facts in her cross examination and she also admitted that, partition effected about 60 years back and she also admitted the land sold out by Sri.Rajegowda to one Sri.Nanjundegowda @ K.Nanjundegowda. The Hon'ble trial court without considering these material facts and decreed the suit. Hence, judgment of the Hon'ble trial court is not tenable either in law or on facts.

3. Hon'ble trial court did not consider and properly understood the documents produced by the defendants. The Hon'ble trial court has not properly understood the written statement and evidence adduced by the defendants.

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

14. After registration of the suit, respondents/plaintiff No.1 and 2 have put their appearance through their advocate Sri. KRM., Trial court record secured.

15. On perusal of the records it appears that, defendants have filed IA No.II U/o order 41 Rule 27 of CPC for seeking permission to lead additional evidence before this court.

16. In annexed affidavit defendant No.1 has sworn to the fact that the respondent/plaintiffs have filed present suit for partition and separate possession. They could not able to secure the documents in time. Hence, they are producing the documents in order to substantiate their defense. If this application not allowed much hardship causes to them. Hence, they pray for allow the application.

17. The plaintiffs have filed objection and contended that, the appellants did not file any documents with respect to suit schedule properties and they have not stated about relevancy of the documents in order to dispose of the appeal effectively. They have filed present application in order to drag the proceedings. Hence, they pray for dismiss the application.

18. On perusal of the records it appears that defendants have filed another IA No. IV U/Sec. 151 of CPC for seeking permission to file counter claim.

19. In annexed affidavit the defendant No.1 has stated that plaintiffs have filed suit for partition and separate possession. The property which acquired his mother Smt. Kempamma, had allotted to husband of the plaintiff No.1. Already partition effected about 65 years back. The Hon'ble trial court did not consider this fact. Hence, he prays for allow the application.

20. The plaintiffs have filed detailed objection and contended that, application filed by the defendants is not maintainable either in law or on facts, without allowing the application the defendants have already filed counter claim which is illegal. The defendants have not stated anything in order to get the relief. They have filed present application at belated stage. Hence, they pray for dismiss the application.

21. Heard arguments. Perused the available materials on record.

22. The points would arises for my consideration as follows:-

POINTS

1. Whether this court is able to pronounce the judgment on the available materials on record without taking into consideration of the additional evidence sought to be adduced by the defendants?

2. Whether the IA No. 6 filed by the defendants for seeking permission to file counter claim is deserve to be allowed?

3. Whether the defendants prove before the trial court that suit filed by the plaintiff is barred by non joinder of necessary properties and parties?

4. Whether the defendants proves before the trial court that already partition effected between the members of joint family as alleged in their written statement?

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

6. Whether the judgment of the Hon'ble trial court does call for interference by this court?

7. What order or decree?

15. My findings to the above said points are as follows:

Point No.1	:	In the Negative
Point No.2	:	In the Negative,
Point No.3	:	In the Negative
Point No.4	:	In the Negative,
Point No.5	:	In the Affirmative,

Point No.6 : **In the Negative,**
Point No.7 : As per the final
order for the following:

REASONS

16. Point No.1: The appellants/defendants have filed IA No.II U/order 41 Rule 27 r/w/sec. Of CPC for seeking permission to adduce additional documentary evidence in support of their defense by producing the following documents.

1. RTC extract of the property bearing Sy. No. 97/1 of Jaginakere village, Santebachahalli hobli, K.R.Pete taluk.
2. RTC extract of the property bearing Sy. No. 67/2 of Jaginakere village, Santebachahalli hobli, K.R.Pete taluk.
3. RTC extract of the property bearing Sy. No. 55/1 of Jaginakere village, Santebachahalli hobli, K.R.Pete taluk.
4. RTC extract of the property bearing Sy. No. 41 of Jaginakere village, Santebachahalli hobli, K.R.Pete taluk.
5. RTC extract of the property bearing Sy. No. 22/2 of Jaginakere village, Santebachahalli hobli, K.R.Pete taluk.

6. RTC extract of the property bearing Sy. No. 38/7 of Jaginakere village, Santebachahalli hobli, K.R.Pete taluk.
7. RTC extract of the property bearing Sy. No. 22/1 of Jaginakere village, Santebachahalli hobli, K.R.Pete taluk.
8. RTC extract of the property bearing Sy. No. 38/8 of Jaginakere village, Santebachahalli hobli, K.R.Pete taluk.
9. Revision settlement Akar Band,
10. Encumbrance certificate,
11. Hissa survey pakka book with respect to property bearing Sy. No. 28/1, 28/7 of Jaginakere village.
12. kayam Takthe of Sy. No. 38/7,
13. Hissa Tippani of property bearing Sy. No. 67/3,
14. Hissa survey book with respect to property bearing Sy. No. 51/1.

17. In the affidavit annexed to this application the defendant No. 1 has stated that, the plaintiffs have filed present suit for partition and separate possession. He could not able to collect proposed documents in time. Hence, he did not furnish said documents before the trial court. Hence, he sought for allow the application.

18. The respondents have filed objection to the present application by contending that application by the appellants is not maintainable either in law or on facts. The plaintiffs have filed present suit for partition and separate possession. The defendants have not produced any documents before the trial court, in his affidavit also he has not stated about relevancy of the documents. Hence, it is clearly appears that appellants have filed this frivolous application to drag on the proceedings. The documents placed before the trial court are sufficient to decide the case of the plaintiffs. Hence, production of the additional documents is not proper to decide the case. These documents are irrelevant documents. If this application is allowed much hardship causes to him. Hence, they pray for dismiss the application with exemplary cost.

19. On perusal of the proposed documents it appears that, plaintiffs have furnished documents with respect to properties of mother of the defendant No.1. According to the defendants their mother's properties have been blended with the joint family. Hence, these properties are necessary properties. Hence, suit filed by the plaintiff is one for partial partition. Hence, it is not maintainable. It is relevant to note here U/o 41 Rule 27 of CPC read as follows:

***Production of additional evidence
in Appellate Court.—(1) The parties
to an appeal shall not be. entitled***

to produce additional evidence, whether oral or documentary, in the Appellate Court. But if

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

1/[(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or]

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.

20. A plain reading of the above said provision makes it clear that, the production of additional evidence whether orally or documentary is permitted only under three circumstances. Firstly whether trial court had refused to admit the evidence, though it ought to have been admitted, secondly the evidence was not available to the party despite excersice of due diligence and thirdly the appellant court required the additional evidence so as to enable it to pronounce judgment or for any substantial cause of like nature.

21. In case on hand, the defendant No.1 in his affidavit annexed to the application has not stated anything about that he made an effort to file proposed documents before the trial court. However, I gone through the proposed documents annexed to this IA. The appellants intend to produce the RTC extracts. The defendant No.1 did not stated anything about documents in his affidavit for what purpose he intended to produce said documents. As already stated above plaintiffs have filed present suit with respect to ancestral property of one Sri.Rajegowda. Defendant No.1 wants to insert the properties which fallen to the share of

his mother. Question is whether property of female Hindu blended with the joint family property or not. I will discuss on this point little later, but answer is NO. Hence, I am of the opinion that the Appellants fail to made out ingredients of Order 41 Rule 27 of CPC to permit them to lead additional evidence. Hence I hold Point No. 1 in the **Negative**.

22. Point No.2: The defendants have filed IA No.4 U/Sec, 151 of CPC for seeking permission to file counter claim. On perusal of the trial court records it appears that Defendant No. 1 and 2 put their appearance before the trial court on 22.09.2020. Thereafter, they have filed their written statement on 17.10.2020.

23. It is relevant to note here decision reported in **AIR 1991 Kant 283** (between **Paravatamma v/s Lokanath**) wherein our Hon'ble High court of Karnataka at para No. 6 of is judgment has held that-

“6. The Supreme Court in Laxmidas Dayabhai Kabrawala v. Nanabhai Chunilal Kabrawala, AIR 1964 SC II considered the case of counter claim before the insertion of rules 6A to 60 of 0.8 of the C.P.C. and held thus (Para 11): "The question has therefore to be considered on principle as to whether there is anything in law -- statutory or otherwise -- which precludes a Court from counter claim

as treating a plaint a in a cross-suit. We are unable to see any. No doubt, the Civil Procedure Code prescribes the contents of a plaint and it might very well be that a counter-claim which is to be treated as a cross-suit might not conform to all these requirements but this by itself is not sufficient to deny to the Court the power and the jurisdiction to read and construe the pleadings in a reasonable manner. If for instance, what is really a plaint in a cross-suit is made part of a written statement either by being made an annexure to it or as part and parcel described thereof, as a though counterclaim, there could be no legal objection to the Court treating the same as a plaint and granting such relief to the defendant as would have been open if the pleading had taken the form of a plaint. Mr. Desai had to concede that in such a case the prevented written what Court from proper described counterclaim not separating statement was and the from as treating a the latter as a cross-suit. If

so much is conceded it would then become merely a matter of degree as to whether contains the all counter-claim the necessary requisites sufficient to be treated as a plaint making a claim for the relief sought and if it did it would seem proper to hold that it would be open to a Court to convert or treat the counter-claim as a plaint in a cross-suit. To hold otherwise would be to erect what in substance is a mere defect in the form of pleading instrument for into denying an what justice manifestly demands. We need only add that it was not suggested that there was anything in O. VIII, R.6 or in any other provision of the Code which laid an embargo on a Court adopting such a course." Again in Mahendra Kumar v. State of M.P. it has been held that R.6A(1) does not, on the face of it, bar filing of a counter claim by the defendant after he had filed the written statement. What is laid down under R. 6A(1) is that a counter claim can be filed, provided the cause of action had accrued to the defendant

before the defendant had delivered his defence or before the time limited for delivering his defence has expired; whether such counter claim is in the nature of a claim for damages or not. Therefore the counter claim filed after filing the written statement cannot be held maintainable, if to the be cause not of action for the counter claim had arisen before filing or the last date fixed for filing the written statement. Thus, it is clear that the counter claim can be filed. The Supreme Court in Laxmidas Dayabhai Kabrawala v. Nanabhai Chunilal Kabrawala, AIR 1964 SC II considered the case of counter claim before the insertion of rules 6A to 60 of O. 8 of the C.P.C. and held thus (Para 11): "The question has therefore to be considered on principle as to whether there is anything in law -- statutory or othed even subsequent to the filing of the written statement provided it relates to the cause of action which had accrued prior to the filing of the suit or prior to the filing of the written statement or prior to the last

date fixed for filing the written statement.”

24. Further, I would like to rely on one more decision reported in **(1997) 8 SCC 174** (between **Shanti Rani Das Dewanjee (Smt) v/s Dinesh Chandra Day (dead) by LRs**) wherein Hon'ble Supreme Court of India at para No.2 of its judgment has held that-

“2. In our view, the impugned decision does not warrant interference. Such question was specifically raised before this Court in Mahendra Kumar and Ors vs. state of Madhya Pradesh and Ors. (1987 (3) SCC 265). It has been held by this Court that right to file a counter claim under Order VIII Rule 6A of the code of Civil Procedure is referable to the date of accrual of the cause of action. if the cause of action had arisen before or after the filing of the suit, and such cause of action continued upto the date of filing written statement or extended date of filing written statement, such counter claim can be filed even after filing the written statement. The said Civil Case No. 248/82, in which the application under Order VIII Rule 6A has been filed by the

defendant respondents was has been filed by the defendant respondents was instituted on 15.7.82 and the application under Order VIII Rule 6A was presented on 22.6.85. It cannot be held that the cause of action for the suit or counter claim was ex facie barred by limitation under Limitation act. It was been sought to be contended by the learned counsel for the appellant that in the instant case, the cause of action had arisen long before the institution of the said civil case No. 248/82 and, therefore, the suit and counter claim were barred under the Limitation Act. Such question was not raised before the Court below and, therefore, had not been gone into. It is therefore, not necessary for this Court to decide the same because the question of limitation regarding the suit if raised will be decided after ascertaining the date of accrual of the cause of action on the basis of relevant materials to be placed on record. We are therefore, not expressing any opinion on the said contention sought to be raised by the learned counsel for

the appellant, for the first time before this Court. As the application under order VIII Rule 6A is not ex facie barred the impugned order cannot be held to be incorrect on the grounds urged before the court below. We therefore find no reason to interfere with the impugned order. This appeal, therefore, fails and is dismissed without any order as to costs.

25. As per the ratio laid down in the above said decisions cause of action to the defendant arose to file counter claim from the filing of the suit till filing of written statement. In case on hand as already stated above, Defendants have filed their written statement on 17.10.2020. After laps on 6 years they have filed present application that too appellate stage. Therefore, I am of the clear view that defendant No.1 and 2 have filed their counter claim at belated stage and they have not filed their counter claim within stipulated time as discussed above. Hence, I hold that application filed by the defendant No.1 and 2 is not maintainable at appellate stage. Hence, I hold Point No.2 in the **Negative**.

26. Point No.3 and 4: These points are inter linked with each other, hence they are taken up together for common discussion in order to avoid repetition of the facts and circumstances of the case.

27. Before going to discuss rival contention of the parties it is correct to state the admitted facts of the case follows:

28. It is an admitted fact that original propositus namely Sri.Bettegowda and his wife Smt. Kempamma had 3 children namely Sri.Rajegowda, Sri.Nanjegowda and Smt. Lakshamma. It is also an admitted fact that plaintiff No.1 is legally wedded wife and plaintiff No.2 is the daughter of deceased Sri.Rajegowda. It is also an admitted fact that Smt. Lakshamma, who is the daughter of propositus died as issue less. It is also an admitted fact that husband of the plaintiff No.1 and father of the 2nd plaintiff namely Sri. Rajegowda died on 15.09.1999. It is also an admitted fact that suit schedule properties originally belongs to Sri.Bettegowda, who died leaving behind him husband of the plaintiff No.1 and defendant No.1 herein. It is also an admitted fact that parties to the proceedings belongs to Hindu by religion.

29. It is the contention of the plaintiff that, there is no partition effected between Sri.Rajegowda and defendant No.1. Hence, plaintiffs and defendants are in joint possession of the suit schedule properties. The defendants No.1 being manager of the joint family has got the katha into his name and transferred the katha into the name of defendant No.2 by way of gift. Hence, they have requested the defendant No.1 to effect partition. But defendant No.1 refused to effect

partition. Hence, they have filed suit for partition and separate possession.

30. On the other hand it is the main contention of the defendants that plaintiffs have not at all included all the ancestral properties, the husband of the plaintiff No.1 had separated himself from the joint family by taking all the properties, which inherited by mother of the defendant No.1 namely Smt. Kempamma. They have adopted one Sri.Ashoka as son, accordingly they have transferred the entire properties to adopted son as per M.R. No. 11/94-95. Hence, suit is not maintainable and liable to be dismissed.

31. The plaintiffs in order to prove their case, plaintiff No. 2 has examined before the trial court as PW-1 and filed 23 documents as per Ex.P1 to Ex.P23. The Ex.P1 is the pedigree. As already stated above there is no dispute between the relationship of the parties. Hence, it need not much discussion on Ex.P1.

32. As already stated above they have furnished RTC extracts of the suit schedule properties as per Ex.P2 to Ex.P23. As already stated above it is an admitted fact that these properties originally belongs to Sri.Bettegowda, who is the father-in-law of plaintiff No.1 and grand father of plaintiff No.2. Hence, it no need much discussion.

33. It is the main contention of the defendants that, deceased Sri.Rajegowda had separated from the joint family by taking properties, which inherited by the mother of the

defendant No.1 namely Smt.Kempamma, from her parents Sri.Basavegowda and Smt.Bettamma. The property in Sy. No. 67/3 measuring 23 guntas, property bearing Sy. No. 84/1A measuring 45 guntas, property bearing Sy. No. 97/1C measuring 26 guntas, property bearing Sy. No. 38/7 measuring 1 guntas allotted to husband of the plaintiff No.1 namely Sri.Rajegowda. Hence, suit is not maintainable without including these properties.

34. Before going to discuss on contention of the defendants it is correct to discuss on concept of **ancestral property**. As already stated above parties to the proceedings belonging to Hindu by religion, hence court fall back to Hindu law in order to ascertain the term ancestral property under Hindu Law. Under Article 221 of Mulla Hindu Law 22nd edition it deals with ancestral properties. It defines the ancestral property means property inherited from parental ancestor. It means all the property inherited by a male Hindu from his father, father's father or father's father's father of his ancestral properties. The ancestral essential features of the ancestral property according to the Mitakshara law is that sons, grand sons, and great grand sons of the persons who inherited it acquire an interest, on the rights attached to such property at the moment of their birth. This property can not change its nature.

35.In case on hand according to the defendants property inherited by mother of the defendant No.1 namely

Smt.Kempamma had allotted to deceased Sri.Rajegowda after the said properties have been blended with the joint family properties. It is well settled that under Hindu law property acquired by the female heir is not amounts to ancestral property. Under such circumstances, court can not come to conclusion that property allotted to Smt.Kempamma is ancestral property.

36.In preceding paragraph of this judgment I have posed question myself is that whether property acquired by the female Hindu can blended with the joint family property or not. I am of the opinion that it is correct stage to discuss on this point as follows:

37. It is the contention of the defendants that, property inherited by Smt.Kempamma blended with the joint family. Hence, said properties allotted to deceased Sri.Rajegowda under partition. Admittedly, doctrine of blending under Hindu law more particularly under Mitakshara law which describes that, share of the one person voluntarily merger into the family property. In case on hand admittedly properties which allotted to husband of the plaintiff No.1 acquired by the mother of defendant No.1. Again I posed question myself is that whether absolute property of the female can blended with the joint family property. Answer is absolutely no because property acquired by the mother of defendant No.1 Smt. Kempamma is her absolute property. Hence, it could not be blended with the property of

Bettegowda. In support of my view I would like to rely on judgment reported in **1977 AIR 2230** (between **Smt. Pushpadevi and Others and The Commissioner of Income Tax Delhi**) wherein Hon'ble Supreme Court of India at para No. 19 to 22 has held that,

19. Having considered the decisions cited at the bar, it may be useful to have a fresh look at the doctrine of blending. The theory of blending under the Hindu law involves the process of a wider sharing of one's own properties by permitting the members of one's joint family the privilege of common ownership and common enjoyment of such properties. But while introducing new sharers in one's exclusive property, one does not by the process of blending efface oneself by renouncing one's own interest in favour of others. To blend is to share along with others and not to surrender one's interest in favour of others to the exclusion of oneself. If a Hindu female, who is a member of an undivided family, impresses her absolute, exclusive property with the character of joint family property, she creates new claimants to her property to the exclusion of herself because not

being a coparcener, she has no right to demand a share in the joint family property by asking for a partition. She has no right of survivorship and is entitled only to be maintained out of the joint family property. Her right to demand a share in the joint family property is contingent, inter alia, on partition taking place between her husband and his sons (see Mulla's Hindu Law, 14th Ed. p. 403, para 315). Under section 3 (2) and (3) of the Hindu Women's Rights to Property Act, 1937 her right to demand a partition in the joint family property of the Mitakshara joint family. accrued on the death of her husband. Thus, the expression 'blending' is inapposite in the case of a Hindu female who puts her separate property, be it her absolute property or limited estate, in the joint family stock.

20. It is well settled that a Hindu coparcenary is a much narrower body than the joint family and it includes only those persons who acquire by birth an interest in _the joint or coparcenary property. These are the three generations next to the holder in

unbroken male descent (see Mulla's Hindu Law, 14th Ed. p. 262, para 213). A Hindu female therefore is not a coparcener. Even the right to reunite is limited under the Hindu law to males (Mulla, p. 430, para 342). It does not therefore militate against the fundamental notions governing a Hindu joint family that a female member of the joint family cannot blend her separate property, even if she is an absolute owner thereof, with the joint family property.

21. In our opinion, therefore, the income of Rs. 21,544 from Nishat Talkies was not assessable in the hands of the Hindu undivided family on the basis that the appellant had blended it with the joint family property.

22. As regards the second question on which this Court had called for a supplementary statement, there is no serious controversy that by the declaration dated September 1, 1961 the appellant must be deemed to have made a gift of the items mentioned therein to the undivided family of which she was a member. The Tribunal's

finding to that effect must, therefore, be confirmed. The income of the property gifted to the Hindu undivided family will be liable to be brought to tax consistently with this finding and in accordance with law.

38. As per the ratio laid down in the above said decision a female member of the joint family can not blend her separate property with the joint family property. In case on hand admittedly deceased Smt.Kempamma died as intestate. Hence, defendant No.1 has rights over the property of his mother. However, his mother property is not at all joint family property. Hence, they may file separate suit with respect to property of mother of the defendant No.1.

39. The defendants have not furnished any documents in order to show previous partition in the property of of the Sri.Bettegowda. Hence, I am of the opinion that, plaintiffs have filed suit with respect to all the joint family properties which inherited by propositus Sri.Bettegowda, they being wife and daughter of Sri.Rajegowda they are entitled for their share in the suit schedule properties. Hence, contention of the defendants is not maintainable and liable discarded. Hence, I am of the opinion that plaintiffs have included all the joint family properties into hotchpot. Hence, they are entitled for their legitimate in the suit schedule properties. Hence, I hold Point No.3 and 4 in the **Negative**.

40. Point No.5:- I have carefully perused the judgment. The 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 hold Point No.5 in the **Affirmative**.

41.Point No.6:- In view of my findings to the points No.1 to 5, 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.6 in the **Negative**.

42. Point No.7: In view of my findings to above points I pass the following:-

ORDER

IA No. II filed by the appellants/defendants U/Order 41 Rule 27 of CPC is hereby dismissed.

IA No. IV filed by the appellants/defendants U/Sec. 151 of CPC is hereby dismissed.

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 II Addl. Civil Judge and JMFC., K.R.Pete in O.S. No.233/2020 dated 31.01.2025 is hereby dismissed.

Consequently, the impugned judgment and decree dated 31.01.2025 passed in O.S. No. 233/2020 by the Hon'ble II 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 04th day of April-2026)

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

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