

KAMD210016112014



Presented on : 20-12-2014  
 Registered on : 20-12-2014  
 Decided on : 29-04-2026  
 Duration : 11 years, 4 months, 9 days

**IN THE COURT OF THE PRL CIVIL JUDGE AND JMFC AT  
 KRISHNARAJAPETE**

**: Present :**

**Smt.Parvathi.V**, B.A., L.L.B.  
 Prl.Civil Judge & JMFC,  
 Krishnarajapet.

**Dated : This the 29<sup>th</sup> day of April 2026**

**O.S. No.618/2014**

|                   |                                                                                                                                                                                                                                                         |
|-------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>PLAINTIFFS</b> | 1. Sri. Suprith<br>S/o Girisha,<br>Aged about 04 years,                                                                                                                                                                                                 |
|                   | 2. Baby boy about 04 months old<br>(not named)<br>(The 1 <sup>st</sup> and 2 <sup>nd</sup> plaintiff are minor<br>and their mother is their natural<br>guardian)<br>Smt. Shashikala<br>W/o Girish,<br>Aged about 22 years<br>R/at Gowdenahalli Village, |

|                                   |                                                              |
|-----------------------------------|--------------------------------------------------------------|
|                                   | Kikkeri Hobli,<br>Krishnarajapete Taluk,<br>Mandya District. |
| <b>(By Sri.G.J.L., Advocate )</b> |                                                              |

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| -Vs- |
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|-------------------|----|-----------------------------------------------------------------------------------------------------------------------|
| <b>DEFENDANTS</b> | 1  | Sri. Lakshmegowda<br>S/o Kalegowda<br>Aged about 65 years,                                                            |
|                   | 2  | Sri. Suresha<br>S/o Lakshmegowda<br>Aged about 28 years,                                                              |
|                   | 3  | Sri.Girisha,<br>S/o Lakshmegowda,<br>Aged about 26 years,                                                             |
|                   | 4  | Sri. Basavegowda<br>S/o Kalegowda<br>Aged about 70 years,                                                             |
|                   | 5. | Kumara<br>S/o Basavegowda,<br>Aged about 30 years,                                                                    |
|                   | 6. | Sri. Mahesha<br>S/o late Bettegowda,<br>aged about 40 years,<br>All are R/at, Gowdenahalli Village,<br>Kikkeri Hobli, |

|  |                                                                                                                        |
|--|------------------------------------------------------------------------------------------------------------------------|
|  | Krishnarajapete Taluk,<br>Mandya District.<br><br>(D-1 to 5 <b>exparte</b> )<br>(D-6 by <b>Sri. G.M.P., Advocate</b> ) |
|--|------------------------------------------------------------------------------------------------------------------------|

|                                            |                                   |        |      |
|--------------------------------------------|-----------------------------------|--------|------|
| Date of institution                        | 20.12.2014                        |        |      |
| Nature of the Suit                         | Partition and Separate Possession |        |      |
| Date of commencement of recording evidence | 18.10.2022                        |        |      |
| Date of close of evidence                  | 06.06.2023                        |        |      |
| Judgment pronounced                        | 29.04.2026                        |        |      |
| Total duration                             | Years                             | Months | Days |
|                                            | 11                                | 04     | 09   |

Sd/-

**Prl.Civil Judge & JMFC,  
Krishnarajapet**

### **JUDGMENT**

The plaintiffs have filed this suit against the defendants for the relief of Partition and Separate Possession with respect to the suit schedule properties.

#### **2. The brief facts of the case of the plaintiffs are as under:-**

The plaintiffs stated that Defendant No.1 is his grandfather, Defendant No.2 is his uncle and Defendant

No.3 is father of the plaintiff No.1 and 2. The suit schedule properties are ancestral and joint family properties. The plaintiffs along with Defendants No.1 to 3, are in joint possession and enjoyment of the suit properties. The third defendant, being the father of plaintiff No.1 and 2, has neglected, failed to provide basic necessities to the plaintiffs. Therefore, the plaintiff's mother has requested the Defendants No.1 to 3 to allot their share, but they have refused to effect the partition. Subsequently, despite intervention by elders, the defendants have not agreed to allot their share. Defendants No.1 to 3 are attempting to alienate the suit schedule properties in favour of Defendants No.4 and 5 in order to defeat the legitimate share of the plaintiffs. Defendant No.1 to 3 have refused to effect partition in the suit schedule properties. Hence, the plaintiffs have filed this suit.

3. After service of summons defendant No.1 to 5 have failed to appear before this court. Hence, they were placed ex-parte. and After service of summons, Defendant No.6 has

appeared through his counsel and he has filed his written statement.

**4. The brief facts of the written statement of defendant No.6 are as under:**

Defendant No.6 contended that Defendants No.1 to 3 have sold land measuring 12 guntas of land out of 22.4 guntas in Item No.1 of the suit schedule property in his favour for a consideration of Rs.36,000/- under a registered sale deed dated 09-12-2015, for their legal necessities, he has been in lawful possession and enjoyment of the said property. Further, he submits that, excluding the said 12 guntas of land, he has no objection for partition of the remaining properties. Hence, on these grounds, he has prayed to dismiss the suit with costs.

5. On considering the rival pleadings of the both parties, this court has framed the following issues:

**ISSUES**

1. Whether the plaintiffs prove that the suit schedule properties are ancestral properties of themselves and defendant No.1 to 3 ?

2. Whether defendant No.6 proves that the defendant No.1 to 3 have sold 12 guntas of land in item No.1 property in his favour for legal necessity and he is in possession of the said properties ?
3. Whether the plaintiffs are entitled to claim share in the suit schedule properties? If so to what extent?
4. Whether the plaintiffs are entitled to accounts as claimed
5. What Order or Decree?

6. In order to substantiate the plaintiffs case, the plaintiff examined herself as PW-1 and got the documents marked as Ex.P1 to Ex.P19 and two witnesses examined as PW-2 & 3 closed plaintiffs side. On the other hand, the defendants did not enter into witness box.

7. Heard the arguments of both sides.

8. On consideration of the materials placed on record, the court answered the above said issues are as under;

Issue No.1 : In the Negative.

Issue No.2 : In the Affirmative.

Issue No.3 : In the Negative.

Issue No.4 : In the Negative

Issue No.5 : As per final order  
for the following:

### **REASONS**

9. **Issue No.1 to 3:-** Since these issues are interconnected with each other, they are taken up together for common discussion in order to avoid repetition of facts and evidence.

10. As could be seen from rival pleadings of both parties, it is admitted fact that the plaintiffs are the children of defendant No.3. The only crux of the dispute between the parties is that, according to the plaintiffs, the suit schedule properties are joint family properties of themselves and defendant No.1 to 3, though defendant No.1 to 3 were not having exclusive right and title, they have colluded with each other, they are trying to alienate the property in favour of defendant No.4 and 5. Since, the suit properties are ancestral and joint family properties, being the coparceners, they are having equal share thereof. On the other hand,

according to defendant No.6, the item No.1 of suit land measuring 12 guntad land was sold by the defendant No.1 to 3 under the registered sale deed dated 09-12-2015. In pursuance to the same, defendant No.6 is in possession and enjoyment thereof. In spite of having knowledge of the same, the plaintiffs have come up with this false suit for wrongful gain.

11. It is well settled principle of law that in order to consider any property as an ancestral property, that property shall devolve from the fourth generations and if any property is to be considered as a joint family property, that property must be purchased or acquired through joint family income or nucleus. If any property is acquired or owned by any member of the family, that property is to be considered as self-acquired or separate property of that person. Now the question is that the burden of proof lies on whom ?.

12. In this regard, it is needful to refer to section **231 of Mulla's Hindu law.**

**Section 231: presumption as to coparcenary and self acquired property-**

where a suit is brought by a Hindu to recover property, alleging that it is his self acquired property and the defendant contends that it is not joint family property or where a suit is brought by a Hindu on partition of property alleging that it is joint family property and the defendant contends that it is his self acquired property, the question arises upon whom the burden of proof lies. The following are the leading rules on the subject:

**(1) The presumption that a joint family continues joint:** the normal state of every Hindu family is joint. Presumably, every such family is joint in food, worship, and estate.

**(2) No presumption that a joint family possesses joint property:** There is no presumption that a family because it is joint, possesses joint family property or any property. When in a suit for partition, a party claims that any particular item of property is joint family property or when in a suit on a mortgage, a party contends that the property mortgaged is

joint family property, the burden of proving that it is so rests on the party asserting it.

13. On careful reading of the aforesaid provision, it makes very clear that until the contrary is proved, it is presumed that every Hindu family is a joint family in food, worship, and estate. But no presumption that a joint family possesses joint property. The burden of proving that any particular property is a joint family property rests on the party asserting it. These principles also emerged in the decision reported in **AIR 1969 SCC 1076(Mudigowda Gowdappa Sankh and others Vs Ramachandra Revgowda Sankh)** and another decision in the case between **Basettappa Bangareppa Bangarshetter Vs Smt. Irawwa Kom Totappa Pattanshetti and others.** Hence the plaintiffs have to prove that suit schedule properties are their joint family properties.

14. Now let us see, whether plaintiffs are able to prove that the suit schedule properties are joint family properties of themselves and defendant No.1 to 3. In order to

substantiate the same, Shashikala has got examined herself as PW1, wherein she deposed in consonance with the averments made in the plaint. In support of her oral evidence PW1 got marked documents as Ex.P1 to Ex.P.19. Ex.P-1 to 6 are the RTC extracts, Ex.P.7 to 9 are the mutation register extracts, Ex.P.10 and 11 are the index of land, Ex.P.13 is the acknowledgment, Ex.P.14 to 17 are the returned postal covers, Ex.P-18 sale deed and Ex.P-19 is the family tree of the plaintiffs. On careful perusal of the same, the plaintiffs stated that suit properties are the ancestral joint family properties of the themselves and defendant No.1 to 3. on perusal of Ex.P-2 to 5, the suit properties stand in the name of defendant No.1, But there is no piece of document on record to show that how defendant No.1 has acquired the suit schedule properties?. Though, at para No.2 of the plaint, the plaintiffs have asserted that suit properties are the ancestral properties of the plaintiffs, they did not place any piece of document as to show that suit properties are the joint family of the plaintiffs and defendant No.1 to 3.

15. Admittedly, the suit schedule properties stand in the name of defendant No.1, but merely the suit schedule properties stand in the name of defendant No.1, it does not construed that suit properties joint family properties. Though the service of summons are served to defendant No.1 to 5, they have not appeared and not filed written statement by admitting that the suit schedule properties are joint family properties. So under these circumstances, the suit schedule properties cannot be treated as the joint family properties of plaintiffs and defendant no.1 to 3. Though defendant No.6 has not disputed the item No.2 to 6 properties, being the plaintiffs, they have to prove that item No.1 to 4 properties are joint family properties by placing cogent and reliable evidence before this court. So under these circumstances, the suit schedule properties cannot be accepted as the joint family properties of the plaintiffs and defendant No.1 to 3.

16. Thus it is clear that the manager of the joint family can alienate the joint family property for legal

necessity or benefit of estate. It is also clear that such alienation binds all the members of the family. It is further clear that aliened has to prove the legal necessity for which the alienation was taken place. It is also clear that the recitals in the deed of alienation are themselves not establishing the fact of legal necessity and they are to be fortified the evidence of both parties.

17. Herein this case, defendant No.1 has become the member of joint family and being the manager of joint family, defendant No.1 along with his sons i.e., defendant No.2 and Defendant No.3 have jointly sold item No.1 of suit property measuring to an extent of 12 guntas in favour of defendant No.6 under Ex.P18/sale deed. On careful scrutiny of recital appeared in Ex.P18/sale deed, it is apparent that for the purpose of welfare of the family, item No.1 of the suit schedule property measuring 12 guntas of land was sold by them.

18. As stated above as per article 240 of Mulla Hindu law, the karta/Manager of joint family can alienate the

property for legal necessities, which are contemplated under article 241 and the family welfare and marriage expenses of family members would falls under legal necessities contemplated under article 241. Herein this case, there is a clearly recital in Ex.P18 that for the purpose of family welfare and Medical expenses of Suresh, they had sold said property for their legal necessities.

19. Further, the recitals in the Ex.P18/sale deed would clearly established that, defendant No.1 to 3 have sold measuring 12 guntas of land out of 22.4 guntas in Sy No.51/8 of the suit schedule property for their legal necessities. So, such being the case the plaintiffs have no right to question the same. In this regard it would relevant to refer the decision of **Hon'ble Apex court of India reported in (2018) 14 SCC 445 (Kehar Singh (deceased) through legal heirs V/s Nachittaar Kaur)** wherein it was held at para No. 26 that “ones the factum of existence of legal necessity stood proved, then in our view no co-parcenar as a right to challenge the sale made by the kartha

of his family. The plaintiff being a son was one of the co-parcenaar along with father Preetham Singh. He has no right to challenge the such sale in the light of findings of legal necessity being recorded against him. It was more so when the plaintiff failed to prove by any evidence that there was no legal necessity for sale of suit land or that the evidence adduced by the defendants to prove the factum of existence of legal necessity was either insufficient or irrelevant or no evidence at all ”.

20. The aforesaid ratio was reiterated in the recent judgment of Hon'ble Apex court reported in **2021 SCC ONLINE SC 1236 (Beereddy Dasarathami Reddy Vs Manjunath)**. Herein this case, the plaintiffs did not place any piece of evidence to show that the alienation made by defendant No.1 to 3 is not for legal necessity. On the other hand, the recitals in the Ex.P18/sale deed would clearly indicates that the alienation made by defendant No.1 to 3 is for legal necessities. So the aforesaid circumstances would clearly infer that the plaintiffs said alienation was

made for legal necessities. So, under these circumstances the alienation made by defendant No.1 to No.3 in favor the defendant No.6 is binding upon the plaintiffs. Moreover the possession of the property also handed over to the defendant No.6 on the date of sale under the registered sale deed at Ex.P-18. On perusal of the Ex.P.19 is the family g-tree of the plaintiffs, it indicates that Suresh, is son of defendant No.1 I.e defendant No.2 died living behind his legal heirs, namely Munjula and Chiathra, in spite of sufficient opportunists, the plaintiffs not impleaded the said legal heirs as parties to the suit.

21. The plaintiffs have not produced any documents to establish that the suit schedule properties are their ancestral properties. Further have not explained how defendant No.1 acquired the said properties as discussed supra. It is a settled principle of law that party who approach the court for relief based on the pleadings and issues, has to prove this case, and the weakness of the defendants cannot be considered as a grounds in favour of

the plaintiffs, in this regard, I would like rely on the decision reported in **2004(1) KCCR 662 K.Gopalareddy (deceased) and others -V/s- Suryanarayana** and others, wherein it is held that,

Head Note: Pleading and proof. Whenever a party approaches the court for relief, based on the pleadings and issues, he has to prove his case. A suit has to be decided based on the merits and demerits of the party who approaches the court. Weakness of the defendants cannot be considered as a trump card of the plaintiff.

22. Therefore, in view of the above discussion, this court is of opinion that the plaintiffs have miserably failed to prove that the suit schedule properties are joint family properties of themselves and defendant No.1 to 3 and the sale deeds dated 07-10-2006 is null and void and not binding on them. Thus, Issue No.1 and 3 answered in the Negative and issue No.2 in the affirmative

23. **ISSUE No.4** : In view of the findings on issue No.1 to issue No.3, this court is of opinion that since the

plaintiffs have failed to prove that the suit schedule properties are joint family properties of themselves and Defendant No.1 to 3, hence they are not entitled for any relief sought in the plaint. Thus, Issue No.4 is answered in the Negative.

24. **ISSUE No.5** :- In view of foregoing discussion on the above issues, this court proceeds to pass the following:

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

The suit of the plaintiffs for the relief of partition and separate possession is hereby dismissed.

In view of the facts and circumstances of the case and relationship between the parties, parties bear their own costs.

Draw decree accordingly.

(Dictated to the stenographer in the open Court. transcribed by her, script revised, corrected and then pronounced by me in the open Court on this the 29<sup>th</sup> day of April, 2026.)

Sd/-  
**(Smt.PARVATHI.V)**  
Prl.Civil Judge & JMFC,  
Krishnarajapet.

**ANNEXURE****1. List of witnesses examined by the Plaintiffs:**

PW.1 : Smt. Shashikala  
PW.2 : Smt. Neela.  
PW.3 : Sri. Raju.

**2. List of documents exhibited by the Plaintiffs:**

Ex.P1to 6 : RTCs extracts  
Ex.P.7 to 9: Mutation register extract  
Ex.P10&11: Index of land  
Ex.P12 : Copy of Legal notice  
Ex.P.13 : Postal acknowledgment  
Ex.P14to17: Postal cover  
Ex.P18 : Copy of Sale deed  
Ex.P19 : Genealogical tree

**3. List of witnesses examined by the Defendants :-**

- Nil -

**4. List of documents exhibited by the Defendants :-**

- Nil -

Sd/-  
Prl.Civil Judge & JMFC,  
Krishnarajapet.