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

**PRESENT: SRI. MAHENDRA M. B.A..LL.B.,
Senior Civil Judge & JMFC.,
Malavalli**

O.S.No.136/2024

DATED: THIS 2nd DAY OF JULY - 2026

Plaintiff:

Smt. Nagamani

D/o Late Mahanthappa
W/o Nanjundaswamy
Aged about 51 years,
R/at No.71, Main Road,
Chikkabagilu Village,
B.G.Pura Hobli, Malavalli Taluk,
Mandya District.

(By Sri. M.M., Adv.)

V/s

Defendants:

1. Sri. Mahadevappa

S/o Late Mahanthappa
Aged about 75 years,

2. Sri. M.Mahadevappa

S/o Late Mahanthappa
Aged about 65 years,

3. Smt. Shivamma

D/o Late Mahanthappa
Aged about 55 years,

4. Sri. Revanna

S/o Late Mahanthappa
Aged about 48 years,

5. Smt. Kavya

D/o Revanna
Aged about 26 years,

All are R/at Bachanahalli Village,
B.G.Pura Hobli, Malavalli Taluk,
Mandya District.

6. Sri. H.N.Rudramurthy

S/o Late H.N.Nagaraju
Aged about 42 years,
R/at Lokasara Village,
Kotthatthi Hobli, Mandya Taluk
and District.

(D1 to 5 placed Ex-parte)
(D6 by Sri. V.L.N., Advocate)

Date Of Institution Of Suit	14.08.2024
Nature Of Suit	Partition and Separate Possession and Mesne profit
Date Of Commencement Of Recording Of Evidence	30.08.2025
Date Of Pronouncement Of Judgment	02.07.2026
Total Duration	Years Months Days 01 10 19

(Mahendra M.)
Senior Civil Judge & JMFC.,
Malavalli.

JUDGMENT

The plaintiff has filed this suit against the defendants for the relief of Partition and Separate Possession and mesne profit over the suit schedule properties.

2. **The brief facts of the plaintiff's case as follows:**

One Late Mahanthappa and Late Basamma had children namely Mahadevappa (D1), Girijamma (Died), M.Mahadevappa (D2), Shivamma (D3), Nagamani (Plaintiff) and Revanna (D4). The defendant No.5 is the daughter of defendant No.4. The plaintiff and defendant No.1 to 4 are the members of Hindu joint family. After the death of Mahanthappa, the katha of the suit schedule properties transferred into the name of defendant No.1 and 4. The plaintiff and defendant No.1 to 4 are continued as joint family members. In respect of house properties, katha continued into the name of Late Mahanthappa. There is no division in the family of Late Mahanthappa. The plaintiff demanded the effect partition over the suit schedule properties. The panchayath also conveyed. The defendant No.1 to 4 are refused to advise of the panchayathdars and refused to give partition to the plaintiff. The defendant No.1 to 4 tried to alienate the suit schedule properties in favour of defendant No.6. **Hence, filed this suit.**

3. After service of suit summons the defendant No.6 has appeared before this court through his counsel, but, not choose to file written statement. After service of suit summons, the defendant No.1 to 5 are failed to appear before this court. Hence, they are placed ex-parte.

4. The following points are arise for consideration of this Court:

P O I N T S

- 1. Whether the plaintiff proves that, the suit schedule properties are ancestral and joint family properties of herself and defendant No.1 to 4 and they are the members of Hindu Undivided Joint Family?**
- 2. Whether the plaintiff is entitled the share in the suit schedule properties and also mesne profit?**
- 3. What Order or Decree?**

5. In order to prove her case, the Plaintiff has examined herself as PW1 and got marked Exp1 to 4.

6. Heard the arguments from the learned counsel for the plaintiff.

7. This court has perused the oral and documentary evidence adduced by the plaintiff. The findings of this Court on the above said Points as under:

POINT No.1: In the Affirmative

POINT No.2: Partly in the Affirmative

***POINT No.3: As per the final order
for the following:***

REASONS

8. **Points No.1 and 2:** These points are interrelated, hence they were taken together for discussion to avoid repetition.

9. It is the case of the Plaintiff that, the suit schedule properties are the ancestral and joint family properties of plaintiff and defendant No.1 to 4. They are joint possession and enjoyment over the suit schedule properties. The defendant No.1 to 4 are refused to give partition in respect of suit schedule properties. The defendants are not contest the suit. Any how the burden lies on the plaintiff to prove her case as per **Sec.101 and 103 of the Indian Evidence Act.**

10. In order to prove her case, the plaintiff has examined herself as PW1 and filed an affidavit evidence in lieu of her examination-in-chief and reiterated the plaint averments. The PW1 got marked ExP1 to 4.

11. The documents produced by the PW1 that, ExP1 is the Genealogical Tree Affidavit, ExP2 and 3 are the computerized RTCs and ExP4 is the demand register extract.

12. This court has let us discuss about what is the meaning of ancestral property? In this regard this Court relied upon one decision in **RFA No.2039 of 2006(Decided on 02.02.2009) between K.Madhava Raja Nayak V/s K.Sridhara Nayak and Others**. The para No.17 to 19 of this Judgment reads as follows:

The Hon'ble Court has defined the Ancestral Property in Para No.17 to 19 as follows:-

Para No.17- In this context, it would be relevant to note that the property under Hindu law can be classified under two heads:(1) Coparcenary property and (2) Separate property. Coparcenary property is again divisible into ancestral property and joint family property which is not ancestral. This latter kind of the property consists of property acquired with the aid of ancestral property and property acquired by individual coparceners without such aid, but treated by them as property of the whole family. Joint family property is qualified in a two fold manner, it must be a joint family property and it must also be ancestral. It is obvious that there must have been a nucleus of joint family property before an ancestral joint family property can come into existence because the word ancestral connotes descent and hence, pre-existence. Where there is ancestral joint family property, every member of

the family acquires in it is a right by birth which cannot be defeated by individual alienation or disposition of any kind except under certain peculiar circumstances. This is equally true of joint family property, where a sufficient nucleus of the property in the possession of the members of a joint family has come to them from a paternal ancestor, the presumption is that the whole property is ancestral and any member alleging that it is not, will have to prove his self acquisition. Similarly, where property is admitted or proved to be joint family property, which may not have been acquired with the aid of ancestral property, but if the same has been treated by them as the property of the whole family, it is subject to exactly the same legal incidents as the ancestral joint family property.

Para No.18- Thus, coparcenary property means and includes (1) Ancestral property (2) Acquisitions made by the coparceners with the help of ancestral property,(3)Joint acquisitions of the coparceners even without such help provided there was no proof of intension on their part that the property should not be treated as joint family property (4) Separate property of the coparceners thrown into the common stock.

Para No.19- The term ancestral property? Has a special meaning in Hindu law. That means only such property as is inherited by a male from father, father's father and father's father's father and such inheritor son, son's son and son's son's son get an interest in it by birth. Hence, unless there is a nucleus of ancestral property with the aid of which the acquisitions are made, the acquisitions cannot be included within the concept of coparcenary property is the property held by a coparcenary absolutely and free of all claims from the rest of coparceners which is known as separate or self acquired property.

13. Keeping in the above decision in the mind this court let us discuss about the documents produced by the plaintiff in respect of suit schedule properties. The plaintiff has produced total 4 documents. The ExP2 and 3 are the Computerized RTC's in respect of item No.1 of the suit schedule property. The said documents reveals that, the khatha in respect of item No.1 of the suit schedule property standing in the name of defendant No.2 and 4. As per said documents, the item No.1 of the suit schedule property is the ancestral property of Late Mahanthappa. The ExP4 is the demand register extract it is show that, the katha of the item No.2 of the suit schedule property stood in the name of Late Mahanthappa.

14. The defendants are not contest the suit and not denied the averments of plaint and also evidence of the PW1. The documents are produced by the plaintiff are unchallenged. The defendants also not denied the relationship with plaintiff. The defendants also not denied the nature of the suit schedule properties. Hence, this court come to the conclusion that, the suit schedule properties are the ancestral and joint family properties of plaintiff and defendant No.1 to 4. The plaintiff is succeed to prove that the suit schedule properties are the ancestral and joint family properties of herself and defendant No.1 to 4. Hence, the plaintiff is entitled the share in the suit schedule properties. Accordingly, the plaintiff is entitled 1/5th share in the suit schedule properties. The defendant No.1 to 4 are entitled each 1/5th share in the suit schedule properties.

15. The plaintiff also claim the mesne profits in respect of suit schedule properties. The word **“Mesne profits”** defined in section 2 (12) of Code of Civil Procedure here under **“Mesne profits”** of property means those profit person in wrongful possession of such property actually received therefrom, together within interest on such profits. But share not include profits due to improvemently made by the that person in wrongful possession.

16. Wrongful possession of the defendants is the variations of the claim for mesne profits and the very foundation of the defendant liability to pay mesne profits goes with actual possession of the lands. Generally, the person in

wrongful possession and enjoyment of the immovable properties is liable for mesne profits. A person is said to be in wrongful possession when he enjoys such possession his right another person is entitled to it under law. In the present suit is filed for the relief of partition and separate possession. In this case, the possession is not considered as wrongful possession it is considered as joint possession. In this regard this court relied upon decision of **Hon'ble High Court of Karnataka reported in ILR 2003 Karnataka 2304 between Parvathi and another V/s Venkatarama Prasad and others.** Hence, the plaintiff not entitled to mesne profits from defendant No.1 to 4 in respect of suit schedule properties. **With these observations this court answered the Point No.1 In the Affirmative and Point No.2 in the Partly Affirmative.**

17. Point No.3: In 2009 AIR(Civil)737, Shub Karan Bubna @ Shub Karan Prasad Bub V/s Sita Saron Babna and others, the Hon'ble Supreme Court had ruled that in a partition suit, while pronouncing judgment for preliminary decree, a civil court has to direct that, the FDP case based on such preliminary decree be proceeded with and that there should be no need for the plaintiff to file another fresh petition for final decree based on such a preliminary decree.

In view of the findings of this court on Point No.1 and 2 this court has proceed to pass the following:-

ORDER

The suit is filed by the plaintiff is hereby decreed in part with cost.

It is declared that, the plaintiff is entitled 1/5th share in the suit schedule properties.

It is further declared that, the defendant No.1 to 4 are also entitled each 1/5th share in the suit schedule properties.

Directed to defendant No.1 to 4 to pay the court fee in their share.

No reliefs sought against defendant No.5 and 6. Hence, suit against defendant No.5 and 6 dismissed.

Relief of Mesne profit is dismissed.

Draw preliminary decree accordingly.

In view of the decision of the Hon'ble Supreme Court in Shub Karan Bubna @ Shub Karan Prasad Bub V/s Sita Saron Bubna and Others, the office is directed to register as FDP case, suomoto and put up the FDP case before the court for further proceedings on 09.10.2026.

All the parties to the suit are directed to take note of the said date i.e., 09.10.2026 on which the further proceedings would be held regarding final decree in accordance with this preliminary decree.

The parties shall appear on the said date before this court in the FDP case to participate therein.

It is clarified that it would not be necessary to issue further notice to parties after registration of the FDP case.

(Dictated to the stenographer directly typed by her on the computer, order corrected and then pronounced by me in the open Court on this the 2nd day of July, 2026)

**(Mahendra M.)
Senior Civil Judge & JMFC.,
Malavalli.**

ANNEXURE

The witnesses examined on behalf of Plaintiffs:

PW1 : Smt. Nagamani

The documents marked on behalf of Plaintiffs:

Exp1 : Genealogical Tree affidavit
Exp2 & 3 : Computerized RTCs
Exp4 : Demand register extract

The witnesses examined on behalf of Defendant/s:

- Nil -

The documents marked on behalf of Defendant/s:

- Nil -

**Senior Civil Judge & JMFC.,
Malavalli.**