



**IN THE COURT OF THE II ADDITIONAL  
DISTRICT AND SESSIONS JUDGE, MYSURU**

**Dated this the 2<sup>nd</sup> day of April, 2026**

**:: PRESENT ::**

**Sri Mallanagouda, B.Com., LL.M.,**  
II Addl. District & Sessions Judge,  
Mysuru.

**R.A./137/2019 AND R.A.451/2018**

**APPELLANT**  
**(RA No.137/2019)**

**::**

R. Geethagopal,  
S/o. Late R. Rangaswamy,  
Aged about 70 years,  
R/at. No.172, 7<sup>th</sup> Cross,  
4<sup>th</sup> Main, Chamarajpet  
Bengaluru.

**[By : Sri. M.L.S , Advocate]**

**V/s**

**RESPONDENTS**  
**(RA No.137/2019)**

**::**

1. Smt.Ningamma,  
W/o. Basavegowda (Since dead)  
R/by her LRs
- 1(a). Smt. Sarojamma,  
D/o. Late Smt.Ningamma,  
Aged about 60 years,  
R/at. Gopalapura Village,  
Jayapura Hobli,  
Mysore Taluk, Mysore.

- 1(b). Smt. Kamalamma,  
D/o. Late Smt. Ningamma,  
Aged about 55 years,  
R/at No.209, 15<sup>th</sup> Cross,  
Belvadi Grama, Mysore.
- 1(c). Smt. Jayamma,  
D/o. Late Smt.Ningamma,  
Aged about 53 years,  
R/at. Mavathuru Village,  
Hebbala Hobli,  
K.R.Nagara Taluk, Mysuru.
- 1(d). Sri. Veeranna,  
S/o. Late Smt.Ningamma,  
Aged about 52 years,
- 1(e). Smt. Sakamma,  
D/o. Late Smt.Ningamma,  
Aged about 50 years,
- 1(f). Sri. Killegowda,  
D/o. Late Smt.Ningamma,  
Aged about 48 years,
- 1(g). Smt. Yashodha,  
D/o. Late Smt.Ningamma,  
Aged about 47 years,  
R/at. Moodalakoppalu Village,  
Bilikere Hobli,  
Hunsur Taluk, Mysore.
- 1(h). Basavaraju,  
S/o. Late Ningamma,  
Aged about 45 years,
- 1(i). Shivaraju,  
S/o. Late Ningamma,

Aged about 43 years,  
Proposed Respondents No.1(d),  
1(e), 1(f), 1(h) and 1(i) are  
R/at. Kaniyanahundi village,  
Hampapura Hobli,  
H.D.Kote Taluk, Mysore.

- 1(j). Smt. Pushpa,  
D/o. Ningamma,  
Aged about 41 years,  
R/at. Moodalakoppalu village,  
Bilikere Hobli, Hunsur Taluk,  
Mysore.
2. Smt. Puttalingamma,  
W/o. Late Thammegowda,  
Aged about 68 years,  
R/at. Gopalapura Village,  
Jayapura Hobli, Mysore Taluk.
3. Sri. Chikkakempamma,  
W/o. Late Venkatappa,  
Aged about 65 years,  
R/at No.1435, 12<sup>th</sup> Cross,  
Janathanagar, T.K. Layout,  
Mysuru.
4. Sri. Marigowda @ Kittanna  
S/o. late Marigowda  
(Since Dead)
- 4(a). Smt. Puttaningamma,  
W/o. Marigowda @ Kittanna,  
Aged about 70 years,
- 4(b). Smt. Ningamma,  
W/o. Boregowda,  
Aged about 62 years,

- 4(c). Smt. Puttalingamma,  
W/o. Gangadhar,  
Aged about 52 years,
- 4(d). Smt. Yashodha,  
W/o. Puttaswamy,  
Aged about 50 years,
- 4(e). Smt. Pushpa,  
W/o. Prakasha,  
Aged about 47 years,
- 4(f). Smt. Lakshmi,  
W/o. Late Govinda,  
Aged about 44 years,
- 4(g). Smt. Kempamma,  
W/o. Late Siddegowda,  
Aged about 68 years,

Respondents No.4(a) to 4(g)  
are residing at Ballahalli village,  
Jayapura Hobli  
Mysore Taluk, Mysore.

- 5. Sri. Gavigowda,  
S/o. Marigowda,  
Aged about 47 years,
- 6. Sri. Beeregowda,  
S/o. Marigowda,  
Aged about 45 years,

Respondents No.4 to 6 are  
R/at. Ballahalli Village,  
Jayapura Hobli, Mysuru Taluk.

- 7. Sri. Srikanta,  
S/o. Marigowda (Since Dead)  
R/by his LRs

- 7(a). Smt. Suchithra,  
D/o. Late Srikanta,  
Aged about 28 years,
- 7(b). Nikhil,  
S/o. Late Srikanta,  
Aged about 12 years,
- 7(c). Gajendra,  
S/o. Late Srikanta,  
Aged about 10 years,

Respondents No.7(b) and 7(c)  
are Minors and hence they are  
representing by her Natural  
Guardian Grand Mother  
Smt. Puttaningamma,  
W/o. Marigowda @ Kittanna.

Respondents No.7(a) to 7(c) are  
R/at. Ballahalli Village,  
Jayapura Hobli, Mysore Taluk,  
Mysore.

- 7(d). Smt. Sushma,  
D/o. Late Srikanta,  
Aged about 22 years,  
R/at. Kalegowdana Hundi Hobli,  
Hunsur Taluk, Mysore.

**[R1(a) to (j) – Absent**

**R2 & 3 By : Sri. S.S.K., Adv.,**

**R4(a) to 4(g) : By : Sri. S.J.L., Adv.,**

**R5 By : Sri. K.T.S., Adv.,**

**R6 & R7(a) to 7(d) – Absent]**

**APPELLANT**  
**(RA No.451/2018)**

:: Sri. Gavigowda,  
S/o. Marigowda @ Kittanna,  
Aged about 70 years,  
R/at. Ballahalli Village,  
Jayapura Hobli,  
Mysuru Taluk.

**[By : Sri. K.T.S., Advocate]**

**V/s**

**RESPONDENTS**  
**(RA No.451/2018)**

- :: 1. Smt. Ningamma (Dead)  
W/o. Basavegowda  
R/by her LRs.
- 1(a). Smt. Sarojamma,  
D/o. Late Ningamma,  
Aged about 60 years,  
R/at. Gopalapura Village,  
Jayapura Hobli, Mysore Taluk.
- 1(b). Smt. Kamalamma  
D/o. Late Ningamma,  
Aged about 55 years,  
R/at. # 209, 15<sup>th</sup> Cross,  
Belavadi, Mysore.
- 1(c). Smt. Jayamma,  
D/o. Late Ningamma,  
Aged about 53 years,  
R/at. Mavatturu Village,  
Hebbala Hobli,  
K.R.Nagara Talluk,  
Mysore District.
- 1(d). Sri. Veeranna,  
S/o. Late Ningamma,  
Aged about 52 years,

- 1(e). Smt. Sakamma,  
D/o. Late Ningamma,  
Aged about 50 years,
- 1(f). Sri. Kittegowda,  
S/o. Late Ningamma,  
Aged about 48 years,
- 1(g). Smt. Yashoda,  
D/o. Late Ningamma,  
Aged about 46 years,  
R/at. Moodalakoppal Village,  
Bilikere Hobli, Hunsur Taluk,  
Mysore District.
- 1(h). Sri. Basavaraju,  
S/o. Late Ningamma,  
Aged about 45 years,
- 1(i). Sri. Shivaraju,  
S/o. Late Ningamma,  
Aged about 43 years,

Respondent No.1(d), 1(e), 1(f),  
1(h) & 1(i) are  
R/at Kaniyanahundi Village,  
H.D.Kote Talluk,  
Mysore District.

- 1(j). Smt. Pushpa,  
D/o. Late Ningamma,  
Aged about 41 years,  
R/at. Moodalakoppal Village,  
Bilikere Hobli,  
Hunsur Taluk,  
Mysore District.
2. Smt. Puttaningamma,  
W/o. Late Thammegowda,  
Aged about 68 years,

R/at. Gopalapura Village,  
Jayapura Hobli,  
Mysuru Taluk.

3. Smt. Chikkakempamma,  
W/o. Late Venkatappa,  
Aged about 65 years,  
R/at. No.1435, 12<sup>th</sup> Cross,  
Janathanagara,  
T.K.Layout, Mysuru.
4. Sri. Marigowda @ Kittanna  
(Dead)  
S/o. Late Marigowda,  
(who absconding more than 10  
years back and presume to be  
death.)  
LRs's of the 4<sup>th</sup> Respondent
- 4(a). Smt. Puttalingamma (Dead)  
W/o. Late Marigowda @  
Kittanna,  
LRs already on record
- 4(b). Smt. Kempamma,  
W/o. Late Siddegowda,  
D/o. Late Marigowda @  
Kittanna,  
Aged about 62 years,  
R/at. Maratikyathanahalli  
Village, Jayapura Hobli,  
Mysuru District.
- 4(c). Smt. Ningamma,  
W/o. Boregowda,  
D/o. Late Marigowda @  
Kittanna,  
Aged about 60 years,  
R/at. K.Shettahalli Village  
and Hobli,

Srirangapatna Taluk,  
Mandya District.

- 4(d). Smt. Puttalingamma,  
W/o. Gangadhar,  
D/o. Late Marigowda @  
Kittanna,  
Aged about 54 years,  
R/at. Ballahalli Village,  
Jayapura Hobli,  
Mysuru Taluk.
- 4(e). Smt. Yashodha,  
W/o. Puttaswamy,  
D/o. Late Marigowda @  
Kittanna,  
Aged about 52 years,  
R/at. Ballahalli Village,  
Jayapura Hobli,  
Mysuru Taluk.
- 4(f). Smt. Pushpa,  
W/o. Late Prakash,  
D/o. Late Marigowda @  
Kittanna,  
Aged about 50 years,  
R/at. Hanuganahalli Village,  
Beerihundi Post,  
Jayapura Hobli,  
Mysuru Taluk.
- 4(g). Smt. Lakshamma,  
W/o. Late Govinda,  
D/o. Late Marigowda @  
Kittanna,  
Aged about 48 years,  
R/at. Ballahalli Village,  
Jayapura Hobli,  
Mysuru Taluk.

5. Sri. Beeregowda,  
S/o. Marigowda @ Kittanna,  
Aged about 68 years,
  6. Sri. Srikanta (Dead),  
S/o. Marigowda @ Kittanna,  
R/by his LRs
  - 6(a). Suchitra,  
D/o. Late Srikanta,  
W/o. Dinesh,  
Aged about 22 years,
  - 6(b). Sushma,  
D/o. Late Srikanta,  
W/o. Naveen,  
Aged about 19 years,  
R/at. Kalegowdana Koppal,  
Hunsur Taluk.
  - 6(c). Nikhil Gowda,  
S/o. Late Srikanta,  
Aged about 14 years,
  - 6(d). Gajendra,  
S/o. Late Srikanta,  
Aged about 11 years,
- Respondent No.6(c) & 6(d) are minor represented by their elder sister 6(a).
- Respondents No.5 & 6(a) to 6(d) are R/at. Ballahalli Village, Jayapura Hobli, Mysuru Taluk.
7. R. Geetha Gopal,  
S/o. Late R.Rangaswamy,  
Aged about 70 years,

R/at. # 172, 7<sup>th</sup> Cross,  
4<sup>th</sup> Main, Chamarajapet,  
Bengaluru.

**[R1(a) to R1(j) – Absent**

**R2 & 3 By : Sri. S.S.K., Adv.,**

**R4(a) – Dead**

**R4(b) to R4(g) By : Sri. S.J.L., Adv.,**

**R5, R6(a) to 6(d) and R7 – Absent]**

|                                                     |   |                                                                                                                  |
|-----------------------------------------------------|---|------------------------------------------------------------------------------------------------------------------|
| Date and nature of decree or order appealed against | : | Judgment and Decree in OS.No.915/2007, dated 24.02.2018 on the file of the learned Prl. Sr. Civil Judge, Mysuru. |
| Date of the institution of the appeals              | : | <b>(R.A.No.137/2019)</b><br>24.04.2019                                                                           |
|                                                     |   | <b>(R.A.No.451/2018)</b><br>27.09.2018                                                                           |
| Date of Pronouncing of judgment                     | : | 02.04.2026                                                                                                       |
| Total duration of appeal                            | : | <b>(R.A.No.137/2019)</b><br>Year/s      Month/s      Day/s<br>06              11              09                 |
|                                                     |   | <b>(R.A.No.451/2018)</b><br>Year/s      Month/s      Day/s<br>07              06              06                 |

**[MALLANAGOUDA]**

II Addl. District & Sessions Judge,  
Mysuru.

**:: JUDGMENT ::**

Since these appeals are filed in respect of the same judgment in O.S.No.915/2007 on the file of Prl. Sr.Civil Judge, Mysuru, dated 24.02.2018, it is decided to write common judgment in respect of both the appeals.

2. The Appellant in RA.No.137/2019 is the Defendant No.5 before the Trial Court, Respondents No.1(a) to (j), Respondent No.2 and 3 are the legal heirs of the Plaintiff No.1, and Plaintiff No.2 and 3 before the Trial Court. Respondent No.4(a) to (g), 7(a) to (d) are the legal heirs of Defendant No.1 and 4 and Respondent No.5 and 6 are the Defendant No.2 and 3 before the Trial Court. Appellant in RA.No.451/2018 is the Defendant No.2 before the Trial Court and Respondents in the said appeal are the Plaintiffs No.2 and 3, Defendant No.3 and legal heirs of Plaintiff No.1, and Defendant No.1 and 4 before the Trial Court.

3. For the sake of convenience the parties are herein after referred as per their status before the Trial Court.

4. The Plaintiffs have filed the suit before the Trial Court seeking partition and separate possession of their shares in the suit schedule properties.

5. The brief facts of the Plaintiff's case before the Trial Court are as under :

One late Marigowda had two wives namely Ningamma and Kempamma, Plaintiffs are the daughters of late Marigowda and Kempamma, Defendant No.1 is the son of Marigowda and Ningamma and Defendants No.2 to 4 are the sons of Defendant No.1. Plaintiffs and Defendants are the members of Hindu joint family and suit schedule properties are the ancestral and joint family properties of Plaintiffs and Defendants. The Plaintiffs have share in the suit schedule properties, hence they demanded

the Defendants to effect partition, but the Defendants have not responded for the said request, in that regard there was panchayath held, inspite of it Defendants have not effected partition. Further, inspite of order passed by this Court on I.A.No.1 restraining Defendants from alienating the suit schedule properties Defendants have sold Item No.1 of the suit properties in favour of Defendant No.5 vide Sale Deed dated 30.11.2007. Further in order to escape from his liability to give share to Plaintiffs Defendant No.2 has executed Gift Deed dated 15.03.2007 in respect of Item No.7 and 8 properties in favour of his wife Smt.Padmamma. Infact Defendant No.2 has no exclusive rights to alienate the Item No.7 and 8 properties. Hence, said Gift Deed is not binding on the Plaintiffs. Hence, Plaintiffs requested for effecting partition by declaring Gift Deed and Sale Deed in respect of Item No.7 and 8 properties as not binding on the Plaintiffs.

6. The Defendants No.1 to 4 have appeared before the Trial Court and filed written statement as under ;

Suit of the Plaintiffs is not maintainable either in law on facts and same is liable to be dismissed in limine. The averments of para-2 of the plaint are totally false, suit schedule properties are the ancestral properties of the Defendant No.1's father, but not the joint family properties of the Plaintiffs. One late Marigowda and Ningamma are the father and mother of the Defendant No.1. The averments of para-3 of the plaint are not true and Plaintiffs are not co-parcenors of the suit property. The averments of para-4 of the plaint are also not true and correct, same are created for filing the suit. The averments of para-5 of the plaint that, Plaintiffs are the co-parcenors of the suit property is false, infact the Defendants have right, title and interest over the said property to sell or alienate the same. The averments of para-6 of the plaint are also

false and incorrect and there is no cause of action to file the suit.

7. The Defendant No.1 is the only son of late Marigowda and late Ningamma. The Defendant No.1 has got 5 daughters and 3 sons, Plaintiffs have not included all the daughters of the Defendant No.1 as parties to the suit. Hence, suit is bad for non-joinder of necessary parties. Further already Defendant No.1 to 4 have divided the suit properties through Panchayath Palupartikath long time, as per the said partition Defendants have improved the suit property, alienated the same and mortgaged the said properties for their legal necessities, they alienated the suit properties for the marriage of the daughters of Defendant No.1. Now the Defendant No.1 to 4 are enjoying the properties separately as per partition, Plaintiffs are strangers to the suit property, they are falsely claiming that they are the daughters of late Marigowda and Kempamma. Since Defendant No.1 to

4 are illiterate, taking undue advantage of the same Plaintiffs have filed the suit. Plaintiffs are not the co-parcenors of the suit properties. Hence, question of Plaintiffs entitlement for partition in the suit property does not arise. Hence, suit of the Plaintiffs is liable to be dismissed.

8. Though Defendant No.5 has appeared through her counsel she has not filed written statement.

9. On the basis of the pleadings, the Trial Court has framed the following Issues and Additional Issues;

### **ISSUES**

1. Whether the Plaintiffs prove that the suit schedule properties are ancestral and joint family properties of Plaintiffs and Defendants ?
2. Whether the Plaintiffs further prove that they are entitled for their lawful share in the plaint schedule properties ?
3. Whether the Defendants prove that the Plaintiffs are not the co-parceners in respect of the suit schedule properties ?

4. Whether the Defendants further prove that the suit is bad for non-joinder of necessary parties ?
5. What Order or Decree ?

**ADDITIONAL ISSUE**

1. Whether the Plaintiffs prove that they are the daughters of late Marigowda and Smt. Kempamma as their LR's ?
10. In support of their case Plaintiffs examined Plaintiff No.3 and two witnesses as PW.1 to 3 and got marked documents at Ex.P.1 to 13 on their behalf. On the other hand, Defendants examined Defendant No.4 as DW.1 and got marked documents at Ex.D.1 and 2 on their behalf.
11. After hearing the arguments the Trial Court has decreed the suit of the Plaintiffs in part and declared that Plaintiffs are entitled for  $1/8^{\text{th}}$  share each in the suit schedule properties.

12. Being aggrieved by the judgment of the Trial Court the Defendant No.5 has filed the RA.No.137/2019 on the following grounds;

The judgment of the Trial Court is wholly unsustainable in law as the same is completely against the well settled principles of law, hence same is liable to be set-aside. The Trial Court has committed error in holding that, suit item No.1 property is the joint family property, infact Appellant is the bonafide purchaser. The previous counsel in O.S.No.915/2007 did not properly handled the case and did not informed about the proceedings of the suit, he filed the Vakalath but he has not filed written statement on behalf of the Appellant. Hence, Appellant was unable to make his appearance before the Trial Court and lead evidence. The Trial Court has committed serious error in considering that the Plaintiffs are the children of late Marigowda based only upon the genealogical tree and Plaintiffs have not produced any other documents like

Voter's card, Ration Card to prove that they are the joint family members of late Marigowda. The suit of the Plaintiff is bad for non-joinder of necessary parties, all the daughters of late Marigowda are not included as parties to the suit. Infact Respondent No.4 to 7 have colluded with the Plaintiffs and they have not contested the suit seriously. The Trial Court has not considered the fact that Marigowda had one more daughter, since the suit is for partition and separate possession all the daughters of Marigowda are also necessary parties. The Appellant has got good case on merits. Hence, it is necessary to give opportunity to Appellant to contest the suit. Therefore, it is necessary to allow the appeal and remand the matter.

13. Being aggrieved by the judgment of the Trial Court the Defendant No.2 has filed the RA.No.451/2018 on the following grounds;

Judgment of the Trial Court is highly illegal and erroneous and same is not sustainable in the eye of

law. Appellant and Respondent No.4 to 6 have taken specific contention that all the properties have been divided through Panchayath Paluparikath dated 20.03.1987, subsequently some of the persons i.e., Defendant No.5 namely Boregowda and his family members have sold almost entire property independently through Sale Deed dated 10.08.1999 to one A. Kandaswamy, they sold land bearing Sy.No.37 measuring 3 acres 31 guntas situated at Ballahalli village, Jayapura Hobli, Mysuru Taluk. The said property is not included in the present suit. Further Respondent No.1 to 3 have intentionally not impleaded daughters of Marigowda. The suit of the Plaintiffs is bad for partial partition and non-joinder of necessary parties. The Trial Judge has erred in not considering the facts of the case and circumstances of the case and also earlier partition effected between the sons of Marigowda @ Kittanna. The Trial Court has wrongly given the findings on Issue No.1 and 2 in Affirmative

and Issue No.3 and 4 in the Negative and Additional Issue No.1 in the Affirmative without any sound proof. Judgment of the Trial Court is misconceived and also against the probabilities of the case. Hence, same is liable to be set-aside.

14. The Appellant has filed application under Order 41 Rule 27 of C.P.C. seeking permission to produce additional evidence in the form of documents.

15. In the Affidavit filed in support of said application the Appellant has contended that, unfortunately, due to unavoidable circumstances and also by mistake himself and his brothers have not contested the suit and they have not produced any documents regarding previous partition. Therefore, now he intended to produce those documents.

16. Heard arguments.

17. Perused the entire record.

18. The points that arises for my consideration are as here under :

**POINTS**

1. Whether the Plaintiffs have produced sufficient evidence regarding their relationship with late Marigowda ?
2. Whether Defendants have produced sufficient material to show that there was previous partition between Defendant No.1 to 4 and some of the Defendants have sold properties fallen to their share ?
3. Whether Defendant No.2 has made out valid grounds for permitting him to produce additional evidence as claimed in the application under Order 41 Rule 27 of C.P.C. ?
4. Whether suit is bad for not including all the properties of the joint family ?
5. Whether suit is bad for non-joinder of necessary parties ?
6. Whether Trial Court Judgment calls for interference by this Court ?
7. What Order or decree ?

19. My findings on the above points are as under:

- Point No.1 :** Does not survive for consideration
- Point No.2 :** Does not survive for consideration
- Point No.3 :** In the Affirmative
- Point No.4 :** In the Affirmative
- Point No.5 :** In the Affirmative
- Point No.6 :** In the Affirmative
- Point No.7 :** As per final order, for the following ;

**:: REASONS ::**

20. **POINT NO.1 TO 6:-** Since these points are inter-related the same are taken up together for discussion to avoid repetition of discussion.

21. It is the case of the Plaintiffs that, they are the daughters of late Marigowda and late Marigowda had two wives namely Ningamma and Kempamma and Plaintiffs are the daughters of late Marigowda through

his wife Kempamma and Defendant No.1 is the son of late Marigowda through his another wife Ningamma.

22. To prove their relationship with late Marigowda Plaintiffs have produced Genealogical Tree marked at Ex.P.1 and they examined Plaintiff No.3 and 2 independent witnesses as PW.1 to 3 and PW.1 to 3 have spoken about relationship of the Plaintiffs with late Marigowda. However, PW.2 and 3 have deposed that Kempamma is the second wife of late Marigowda and Plaintiffs are the daughters of late Marigowda through his second wife Kempamma. But nowhere in their deposition PW.1 to 3 have deposed anything as to whether late Marigowda had married his second wife during lifetime of his first wife or he married his second wife after the death of his first wife. If late Marigowda had married Plaintiff's mother Kempamma during lifetime of his first wife, the Plaintiffs will become illegitimate children of late Marigowda and they are not entitled to claim share as co-parcenors and they are

entitled for share in the property fallen to the share of late Marigowda in notional partition. However, by looking to the judgment of the Trial Court as Plaintiffs were married prior to commencement of amendment to Section 6 of Hindu Succession Act the Trial Court has allotted  $1/8^{\text{th}}$  share only to Plaintiffs. But now in view of judgment of Hon'ble Supreme Court in Vinitha Sharma case even if daughters are married prior to commencement of amendment of Section 6 of Hindu Succession Act they are entitled for share as co-parcenor. Therefore, fact of marriage of late Marigowda with Kempamma during lifetime of his first wife or otherwise makes lot of difference in the share of Plaintiffs. Further by looking to Ex.P.1 it appears that as per the Plaintiffs only late Marigowda has got 2 children through his first wife Ningamma, Defendant No.1 is the son of late Marigowda through his first wife Ningamma and another one Kempamma is shown as daughter of late Marigowda though his first wife

Ningamma and in the Genealogical Tree itself it is mentioned that said Kempamma has died and she was married, but nowhere in the plaint or in genealogy it is mentioned about children of late Kempamma. Infact as per the amendment of Section 6 of Hindu Succession Act and as per judgment of Vinitha Sharma case if children of said Kempamma are alive they are also entitled for share in the joint family properties equalent to the share of late Marigowda who is Defendant No.1 herein. Therefore, as Plaintiffs have not included said Kempamma or her legal heirs the suit is bad for non-joinder of necessary parties. Further, it is the case of the Defendants that they already effected partition in the joint family properties between Defendant No.2 to 4 and they have sold some of the properties and daughters of Defendant No.1 are not arrived as parties to the suit. Hence, on that grounds suit is not maintainable. Infact, as held by Hon'ble Supreme Court in Vinitha Sharma case if there is

partition effected prior to commencement of amendment of Section 6 of Hindu Succession Act in that event also daughters cannot claim partition in the joint family properties as co-parcenors. However, the Defendants have not at all produced any evidence regarding said previous partition, but as Plaintiffs have failed to implead Kempamma or her legal heirs as parties to the suit it is proper and necessary to remand the matter to Trial Court with a direction to implead said legal heirs of Kempamma as Defendants. Therefore, when it is decided to remand the matter it is proper and necessary to include daughters of Defendant No.1 also as Defendants.

23. Further as Plaintiffs have not included legal heirs of Kempamma as parties to the suit, it is decided to remand the matter for fresh disposal and it is decided to allow the application filed by the Defendant No.2 under Order 41 Rule 27 of C.P.C.

24. Furthermore, during cross-examination of PW.1 she has admitted to the suggestion stating that, house properties are not included in the present suit. Further PW.2 has admitted to the effect that after partition Boregowda has sold properties fallen to his share. Therefore, it appears that, house properties of the joint family and properties sold by said Boregowda are not included in the present suit. Therefore, it is decided to direct the Plaintiff to include all the properties of the joint family.

25. Therefore, when all the necessary parties are not included and all the properties are not included in the suit it is decided to remand the matter. **Therefore, Point No.1 and 2 does not survive for consideration. Accordingly, Point No.1 to 6 are answered as above.**

26. **POINT NO.7:-** In view of my findings on the above point, I proceed to pass the following :

## **ORDER**

The Appeals filed by the Appellants in RA.No.137/2019 and RA.No.451/2018 are ***allowed.***

The Judgment and Decree in OS.No.915/2007 dated 24.02.2018 on the file of Prl. Senior Civil Judge, Mysuru is ***set-aside.***

Matter is remanded back to Trial Court for fresh disposal.

Plaintiffs are directed to implead LR's of Kempamma daughter of late Marigowda and daughters of Defendant No.1 Marigowda @ Kittanna.

Further Plaintiffs are directed to include house properties and the properties sold by Defendants.

After impleading the parties and properties as above the Trial Court is directed to provide opportunity to Defendant No.5 and impleaded parties to file written statement and opportunity to

both the parties to the suit to produce further evidence and decide the suit afresh on merits.

As the suit is of the year 2007 the Trial Court is requested to dispose off the suit expeditiously.

Draw decree accordingly.

Send back the Trial Court records along with copy of this Judgment in this Appeal.

Keep original judgment in RA.No.137/2019 and copy in RA No.451/2018.

[Dictated to the Stenographer, transcribed & computerized by her, transcript revised, corrected and then pronounced by me in the open Court on this the **2<sup>nd</sup> day of April 2026**]

**[MALLANAGOUDA]**

II Addl. District & Sessions Judge,  
Mysuru.