

KAMS010074992023



**IN THE COURT OF THE III ADDL. DISTRICT JUDGE,
MYSURU**

:PRESENT:

Sri. **Gururaj Somakkalavar**, M.A.,LL.B.,
III ADDL. DISTRICT JUDGE: MYSURU.

R.A./229/2023

Dated this the 16th day of April, 2026

- Appellants:**
1. Shivalingaiah
S/o Late Mahalingaiah,
Aged about 57 years,
 2. Prakash,
S/o Late Mahalingaiah,
Aged about 51 years,

Both are R/at Shankarapura,
Nanjangud Town,

[By Sri.S.S, Adv.,]

V/s

- Respondents:**
1. Smt.Puttamma,
D/o Late Mahalingaiah,
Aged about 60 years,

2. Smt.Chinnathayamma,
W/o Late Nanjappa,
Aged about 47 years,
3. Srikanta,
S/o Late Nanjappa,
Aged about 34 years,
4. Nagaraju,
S/o Late Nanjappa,
Aged about 30 years,
5. Mahadeva,
S/o Mahalingaiah,
Aged about 51 years,

R-1 to 5 are R/at House No.4429,
4th Cross, Shankarapura Layout,
Nanjangud Town.

6. Devaraju S/o Mahalingaiah,
Aged about 59 years,
7. Puttaswamy,
S/o Late Mahalingaiah,
Aged about 56 years,
8. Smt.Rajamma,
W/o Mallaiah,
D/o Late Mahalingaiah,
Aged about 54 years,
9. Smt.Geethamma,
W/o Mahadevaiah
D/o Late Mahalingaiah,
Aged about 50 years,

R-6 to 9 are R/at 2nd Cross,
Shankarapura, Nanjangud Town,
Mysuru District.

[R-1 to 5 By Sri.B.N.S, Advocate
R-7, 8 & 9 By Sri.M.S, Advocate
R-6 – Exparte]

Date of institution of appeal: 12.10.2023

Nature of appeal: To set aside the judgment and decree passed in OS No.174/2022 dated 10.07.2023 on the file of Senior Civil Judge & JMFC, Nanjangud.

Date on which the judgment was pronounced: 16.04.2026

Total Duration:	Days	Month	Year
	04	06	02

J U D G M E N T

The appellants have preferred this appeal challenging the Judgment and decree dated 10.07.2023 passed in OS.No.174/2022 on the file of Senior Civil Judge & JMFC, Nanjangud and prays to set-aside the judgment by allowing this appeal.

2. The rank of the parties is being referred to as referred in the Trial Court for the sake of convenience and brevity.

3. The appellants are the defendant No.2 & 5 and respondent No.1 to 5 are the plaintiffs and respondent No.6 to 9 are the defendant No.1, 3, 4 & 6 before the Trial Court. The plaintiffs/respondent No.1 to 5 have filed the above suit in OS No.174/2022 for the relief of Partition and Separate Possession.

4. The Trial Court, upon perusal of the oral and documentary evidence and the material available on record has decreed the suit of the plaintiffs/respondent No.1 to 5. It is against the said Judgment and decree the present appeal is preferred by the appellants.

5. The case of the plaintiffs in brief is that:

The plaintiffs and the defendants are the members of an undivided joint family. Suit schedule properties are the joint family properties of the plaintiffs and the defendants and they are in joint possession of the suit schedule property. The propositus of the said joint family Mahalingaiah had two wives i.e., Seeramma and Channabasamma. Plaintiff No.1 is the daughter, plaintiff No.5 is the son of Seeramma and plaintiff No.2 is the widow of one of the sons of Seeramma and plaintiffs 3 and 4 are the sons of plaintiff No.2. Defendants are the children of Channabasamma. That the plaintiffs have demanded for

their share but the defendants have refused to effect partition. In spite of issuance of legal notice dated 16.06.2022 the defendants have not partitioned the suit schedule property. Hence, they have filed the suit and prays to decree the suit.

6. The defendant No.1 to 3 and 5 did not appear before the court. Hence, they were placed *exparte*. Defendants No.4 and 6 though appeared before the court through their counsel, did not file written statement.

7. Upon the rival pleadings of the parties and on perusal of the material available on record, the trial Court has framed the following points.

1. Whether the plaintiffs prove that they have got 3/9th share in the schedule property as alleged ?
- 2 Whether the plaintiffs are entitled for mesne profits ?
3. What order or decree?

8. To prove the plaint averments, the plaintiff No.1 is examined herself as PW-1 and got marked documents as Ex.P-1 to 16 and plaintiffs evidence stage was closed.

Further, the defendants neither cross-examined the P.W.1 nor adduced evidence from their side.

9. The Trial Court on appreciation of the evidence available on record decreed the suit of the plaintiff/respondent No.1 to 5. It is against the said judgment and decree, the present appeal is filed by appellants/defendant No.2 & 5.

10. The appellants urged the following grounds in support of their appeal.

The trial court erred in appreciating the oral and documentary evidence by the plaintiff to against to the sound principle and probabilities of the case in decreed the suit of the plaintiffs.

The judgment and decree passed by the trial court based on documentary evidence alone produce by the plaintiff without applied the judicial mind since the suit is of partition and separate possession with regard to suit property hence the judgment and decree passed by the trail court is per-verse capricious and against to the facts and circumstances of the case.

The appellants have good grounds to urge before this court regarding there rights is concerned the appellant intended to filed their written statement and opted to cross examine the PW-1 and to adduce evidence oral and

documentary to protest the case of the plaintiffs. But they could not opt to adduce evidence and cross examine in the PW-1 by only the reasons that the plaintiffs wherein assured to settle the matter amicably out of court and also assured that they were not willing believing that words of plaintiff did not come to the court to to produce with the case thereby the appellants hereby innocent contest the case.

The appellants are willing to adduce evidence by produce documents and cross examine the PW-1. Hence it is very much necessary to remand to case to cross examine the PW-1 and file written statement and produce of documents on their side.

Accordingly, the appellants prays to set aside the Judgment and decree passed on 10.07.2023 on the file of Senior Civil Judge & JMFC, Nanjangud in OS No.174/2022 by allowing this appeal.

11. Having heard the arguments of both sides and upon perusal of the Trial Court records, the points that arise for consideration of this court is:-

1. Whether the Trial Court is justified in holding that, the suit schedule property is joint family property and granted share to the plaintiff in the suit schedule property?

2. Whether the Judgment and decree dated 10.07.2023 on the file of Senior Civil Judge & JMFC, Nanjangud in OS No.174/2022, do call for interference of this court ?
3. Whether the matter to be remanded to the trial court for fresh disposal ?
4. What order?

12. The findings of this court to the aforesaid points is:

- Point No.1 : In the Negative**
Point No.2 : In the Affirmative
Point No.3 : In the Affirmative
Point No.4 : As per final order for the following:

REASONS

POINT No.1 to 3:

13. The appellants/defendant No.2 & 5 herein have assailed the judgment and decree dated 10.07.2023 in O.S.No.174/2022 on the file of Senior Civil Judge & JMFC, Nanjangud. The respondent No.1 to 5 are the plaintiffs before the Trial Court and appellants are the defendant No.2 & 5 and rest of the respondents are the defendant No.1, 3, 4 & 6 before the trial court.

14. The respondent No.1 to 5 have filed suit for partition and separate possession in respect of suit schedule property. The trial court has decreed the suit of the plaintiffs and held that, plaintiff No.1 & 5 and defendants are entitled for 1/9th share each and plaintiff No.2 to 4 together are entitled for 1/9th share in the suit schedule property. Aggrieved by the said judgment and decree present appeal is preferred.

15. Before advertng into the merits of the appeal, it is necessary to look into the version of the plaintiffs. The plaintiffs and the defendants are the members of an undivided joint family. Suit schedule properties are the joint family properties of the plaintiffs and the defendants and they are in joint possession of the suit schedule property. The propositus of the said joint family Mahalingaiah had two wives i.e., Seeramma and Channabasamma. Plaintiff No.1 is the daughter, plaintiff No.5 is the son of Seeramma and plaintiff No.2 is the widow of one of the sons of Seeramma and plaintiffs 3 and 4 are the sons of plaintiff No.2. Defendants are the children of Channabasamma. That the plaintiffs have demanded for their share but the defendants have refused to effect partition. In spite of issuance of legal notice dated

16.06.2022 the defendants have not partitioned the suit schedule property. Hence, they filed the suit.

16. After inception of the suit, the defendant No.1 to 3 and 5 have not appeared before the court and they have not contested the suit. On the other hand, the defendant No.4 & 6 though they have appeared before the court, they have not contested the suit.

17. The plaintiff No.1 examined herself as PW-1 and her testimony is not tested by cross-examination. The trial court after hearing the plaintiffs has decreed the suit. Now, the appellants have filed this appeal and challenged the judgment and decree on the ground that, the appellants intended to challenge the suit of the plaintiffs by filing written statement and to cross-examine the PW-1 and also to adduce oral and documentary evidence. The other reason they have assigned is that, there is discussion of amicably settlement, as such they have not appeared before the court and contested the appeal.

18. It is relevant to note that, as per the plaintiffs, these plaintiffs are the children of Mahalingaiah through the 1st wife Seeramma and defendants herein are the children of Mahalingaiah through the 2nd wife by name Channabasamma. The suit schedule properties are the

undivided joint family properties. They are enjoying the said suit schedule properties jointly and there is no partition in respect of suit schedule properties.

19. During the arguments by the appellants, it is pointed out that, these plaintiffs are not the children of Mahalingaiah and they are taking advantage of the absences of the defendants and got decree in the hands of court.

20. On the other hand, counsel for the respondent No.1 to 5 has addressed arguments that, the trial court has given sufficient opportunity to the appellants to contest the suit. But, they have not appeared and contested the suit. Now, they have come up with the false allegations that, they have not been given opportunity before the trail court. The trial court after appreciating the evidence on record has rightly come to the conclusion and decreed the suit.

21. It is to be noted here that, documents produced at Ex.P-1 to 7 discloses that, the suit schedule property bearing Sy.No.1280/1. Some of the documents are standing in the name of Marinnanjaiah and some of the documents are standing in the name of Mahalingaiah and Siddaiah. The scrutiny of these documents is necessary.

22. Further, extent of land in some of the documents is 1 acre 36 guntas and in some of the documents namely Ex.P-7 it is 1 acre 11 guntas. The case of the plaintiff is not tested with cross-examination. It is not proper at this stage to come to conclusion as because the case of the plaintiffs and the documents are to be scrutinized.

23. The appellants/defendant No.2 & 5 have disputed the case of the plaintiffs. The rights of the parties has to be adjudicated in a proper manner and it requires consideration and analyses of the facts and the documentary evidence. At this juncture this court of the view that, an opportunity has to be given to the appellants/defendant No.2 & 5 and the other defendants to contest the suit of the plaintiffs by filing written statement and cross-examination of PW-1.

24. This court is of the view that, the judgment and decree of the trial court is to be set aside and matter has to be remanded to the trial court for fresh disposal for giving opportunity to both the sides. However, it is made clear that, if, the plaintiffs and defendants do not co-operate in the suit, the court may pass appropriate order. With these observation, the judgment and decree of the trail court is hereby set aside and matter is remanded back to the trial

court for fresh disposal. Accordingly, appeal is hereby allowed. **Accordingly, point No.1 held in Negative and point No.2 & 3 are held in Affirmative.**

Point No.4

25. In the result, I proceed to pass the following:

ORDER

The appeal filed under Order 41 Rule 1 R/w Section 151 of C.P.C is hereby **allowed**.

The judgment and decree dated 10.07.2023 in OS.No.174/2022 on the file of Senior Civil Judge & JMFC, Nanjangud is hereby **set aside**.

The case is remanded back to the trial court to dispose afresh by giving opportunity to both the sides. It is directed to the plaintiffs and defendants to cooperate in the early disposal of the case, failing which the trial court may pass appropriate order.

Send back the trial court records with
the copy of this judgment forthwith.

Draw decree accordingly.

(Dictated to the Stenographer on computer, corrected and then pronounced
by me in the open Court on this the **16th day of April, 2026**)

[Gururaj Somakkalavar]
III Addl. District Judge,
Mysuru