

KAMS200000602019



**THE COURT OF THE SENIOR CIVIL JUDGE AND J.M.F.C.,  
H.D.KOTE**

**Present: Sandesh Prabhu.B.** B.A(Law),LL.B,PGDHRM.,  
Senior Civil Judge & J.M.F.C.,  
H.D.Kote.

**O.S.NO.9/2019**

**Dated : On this the 3<sup>rd</sup> April, 2024**

**Plaintiff/s :** Sathyaraju  
S/o Late, Gujjanayaka.  
Aged about 30 years,  
R/at Chamegowdana Hundi Village,  
Kothegala post, Saraguru Hobli and  
Taluk, Mysuru District.

**(By Sri.C.M.Pramathesha., Advocate)**

**-V/s-**

**Defendant/s:** 1. Konanayaka  
S/o Late, Gujjari,  
**Since dead LRs of the deceased  
defendant No-1**

1(a). Konanayaka  
S/o Late, Konanayaka,  
Aged about 60 years,

1(b). Siddamma  
W/o Late.Chamanayaka,  
S/o Late, Konanayaka.  
Aged about 40 years.

1(c). Kempamma  
D/o Late.Chamanayaka,  
Aged about 28 years.

- 1(d). Kumara C,  
S/o Late.Chamanayaka,  
Aged about 25 Years.
- 1(e). Chandra C,  
S/o Late.Chamanayaka,  
Aged about 23 Years.
- 1(f). Ramanayaka  
W/o Late, Devamma,  
D/o Late, Konanayaka,  
Aged about 60 years,
- 1(g). Ramesh  
S/o Late.Devamma,  
Aged about 35 years,
- 1(h). Ravi  
S/o Late.Devamma,  
Aged about 36 years,
- 1(i). Basuraju  
S/o Late, Devamma,  
Aged about 35 years,
- 1(k). Paddi  
D/o Late, Devamma,  
Aged about 35 years,
- 1(l). Ramanna  
S/o Late.Devamma,  
Aged about 39 years,

All are R/at Chamegowdana Hundi village,  
Kothegala post, Saraguru Hobli and  
Taluk, Mysuru District.

2. Seeramma  
W/o Late, Kempayaka,  
Aged about 70years,
3. Doddanayaka  
S/o Late, Kempayaka,  
Aged about 50 years,

4. Chamamma  
D/o Late.Kempayaka,  
Aged about 45 years,
5. Kempanayaka  
S/o Late.Kempayaka,  
Aged about 43 years,
6. Chamanayaka  
S/o Late, Kempayaka  
Aged about 40 years,
7. Kempamma  
D/o Late.Kempayaka,  
Aged about 38 years,

All residing at R/ at Chamegowdana  
Hundi village, Kothejala post, Saraguru  
Hobli and Taluk, Mysuru District.

**(D2, 4 to 6 by Sri. M.N.Ravishankar.,  
Advocate, D1(a) to D1(e) by Sri. Hari  
Kumara.T., Advocate, 3 and 7,  
D1(f) to D1(l) placed exparte )**

Date of institution of the Suit	:	14.02.2019
Nature of the Suit	:	Partition and Separate Possession
Date of commencement of recording of evidence	:	06.11.2020
Date on which the Judgment was pronounced	:	03.04.2024
Total duration	:	Years /s    Month/s    Day/s 05                01                20

**(Sandesh Prabhu. B)  
Senior Civil Judge & J.M.F.C  
H.D.Kote**

**J U D G M E N T**

The suit is filed for the relief of partition and separate possession of plaintiff's 1/3<sup>rd</sup> share over suit schedule properties and by directing the defendants to deliver the plaintiff's share in schedule properties with free from all the encumbrance along with cost of the suit.

2. The case of the plaintiff in nutshell is as follows:

3. It is stated that the father of the plaintiff by name Late.Gujjanayaka was died on 08.08.2011 by leaving behind his legal heirs who are Eramma who is his wife and six children including the present plaintiff who filed the present suit for partition on behalf of all the legal heirs of his father.

4. It is stated that the grandfather of the plaintiff by name Late.Gujjanayaka, the defendant No.1 and the husband of defendant No.2 by name Kempanayaka are the children of original propositus by name Late.Gujjanayaka. After the death of said original propositus Late.Gujjanayaka, all the suit schedule properties are transferred in the name of his first son by name Gujjanayaka who is grandfather of the plaintiff. The said grandfather of the plaintiff by name Gujjanayaka was died in the year 1975 and after his death his two brothers who are defendant No.1 and husband of defendant No.2 are living together and cultivating the schedule properties jointly as ancestral properties.

5. It is further submitted that the suit schedule properties are the ancestral joint family properties of plaintiff and defendants family and they are cultivating the schedule

properties equally since from long back and this fact is known to everybody in the family. It is stated that the father of the plaintiff by name Gujjanayaka died on 08.08.2011 by leaving behind his legal heirs and they are in joint possession and cultivation of the suit schedule properties. There is no any partition took place between the grandfather of the plaintiff and his brothers till this day and they are in joint possession and enjoyment of the suit schedule properties.

6. It is also submitted that in the year 2017-18, the defendant No.5 was making effort to cut-off the tress grown in the suit schedule properties but the plaintiff and his family members have restrained the illegal acts of the defendant No.5 and thereafter he denied the plaintiff's right over schedule property. Thereafter the plaintiff and his family members have searched all the revenue documents at Taluk Office and they came to know that the defendant No.1 and his brother by name Late.Kempanayaka have created false revenue documents behind back of father of plaintiff and the said fact came to the knowledge of the plaintiff recently. It is stated that as per the revenue records, the defendant No.1 and his brother have got changed huge extent of land in their names and the katha of small extent of land is changed in the name of grandfather of the plaintiff by name Gujjanayaka.

7. It is stated that the item No.2 of schedule property is also ancestral property of plaintiff and defendants and the katha relating to said property is jointly stands in the name of grandfather of the plaintiff, defendant No.1 and husband of

defendant No.2. It is also submitted that after knowing about the illegal act of the defendant No.1 and his brother in respect of item No.1 of schedule property, the plaintiff filed an appeal before Assistant Commissioner, Hunsur by challenging the mutation register in MR – ICR-30/1980-81 but the Assistant Commissioner of Hunsur has passed its order by stating that the matter is in the nature of Civil Rights and therefore directed the plaintiff to approach the Civil Court for appropriate relief. Therefore the plaintiff is constrained to file the suit against the defendants. Hence prayed to decree the suit with cost.

8. In pursuance of the summons, the defendant No.1 appeared before the court through his counsel. The defendant No.2, 4 to 6 have appeared before the court through their separate counsel and filed written statement. The defendant No.3 and 7 in spite of service of summons remained absent and they have been placed *exparte*.

9. During pendency of the suit, defendant No.1 was deceased and his legal heirs were brought on record as defendant No.1(a) to 1(l) and they are represented by their counsel.

10. The defendant No.1 has filed his written statement. The defendant No.2, 4 to 6 have filed their separate written statement.

11. The brief defence of the defendant No.1 as per his written statement is as follows:

12. It is stated that the father's name of this defendant is Late.Gujjanayaka and not Late.Gujjari as mentioned in the cause title of the plaint. The said Gujjari is the grandfather of this defendant and said fact known to anybody. It is admitted that the Late.Gujjanayaka who is the father of this defendant had three male children by name Gujjanayaka who is the grandfather of the plaintiff, this defendant who is second son and one Kempanayaka who is the husband of defendant No.2 and father of defendant No.3 to 7.

13. It is stated that this defendant is a aged person and he is not having knowledge about the revenue records of the suit schedule properties but all the members are cultivating approximate extent of the schedule properties. This defendant is ready and willing to divide the suit schedule properties equally among the children of Late.Gujjanayaka. Further this defendant in his written statement has stated about the family genealogy. It is further stated that all the children of original propositus by name Late.Gujjanayaka are equally cultivating the schedule property but due to mistake of wrong entry in revenue records, the family members of Kempanayaka who are defendant No.3 to 7 are taking advantage and making effort to knockoff the large extent of the property and refused to give equal extent of share to the plaintiff and this defendant. It is admitted that the schedule properties are cultivated by the plaintiff and defendants equally and this defendant made necessaries application to the revenue authority for change of his father's name in revenue records but the revenue officials have not

complied the request made by this defendants. Hence prayed to dismiss the suit with cost.

14. The brief defence of the defendant No.2, 4 to 6 as per their written statement is as follows:

15. The plaintiff in the plaint has stated that his father by name Gujjanayaka was died on 18.08.2011 by leaving behind his legal heirs but the plaintiff has not made all the legal heirs of said Late.Gujjanayaka as parties to the suit. The plaintiff got no right to claim the share on behalf of all the legal of his father without making them as parties to the suit. It is denied that the grandfather of the plaintiff, defendant No.1 and husband of defendant No.2 are the children of one original propositus by name Gujjanayaka. It is denied that the grandfather of the plaintiff by name Gujjanayaka was died on in the year 1975 and it is also denied that after his death, the defendant No.1 and husband of defendant No.2 are cultivating the family properties jointly. These defendants have further denied the averments made in other paragraphs of the plaint and denied that the schedule properties are the ancestral joint family properties of plaintiff and defendants. It is denied that the 5<sup>th</sup> defendant raised loan over the family property. The plaintiff has filed the present suit to harass these defendants. The plaintiff and his family members have already got their share during life time of father of the plaintiff by name Gujjanayaka and they are enjoying their share uninterruptedly and peacefully. Therefore the question of making again partition does not arise. It is also

stated that the suit of the plaintiff is hit by non joinder of necessary parties. Hence prayed to dismiss the suit with cost.

16. Based on the rival pleadings of the parties, the predecessor in office has framed the following issues:

### **ISSUES**

1. Does the plaintiff prove that himself and defendants constituted joint family?
2. Does the plaintiff prove that the suit schedule properties are the ancestral family properties of the plaintiff and defendants?
3. Does the defendant No.1 prove that suit schedule properties were already partitioned as alleged in para.No.6 of the written statement?
4. Is the plaintiff entitled to the relief of partition and separate possession of 1/ 3<sup>rd</sup> share in the suit properties?
5. To what shares the defendants are entitled?
6. To what relief the parties are entitled?
7. What Order or Decree?

### **Additional Issues**

1. Is the suit is bad for non joinder of necessary parties as pleaded in para-2 of the written statement of defendant No.6?

17. The plaintiff in order to prove his case, he himself got examined as PW-1 and produced documentary evidence as per the Ex.P1 to Ex.P14. On the other hand the defendant No.1(a) got examined before the court as DW-1 and produced documentary evidence as per Ex.D1 and Ex.D2. The defendant No.6 got examined before the court as DW-2 and produced documentary evidence as per Ex.D3 to Ex.D43.

18. Heard the arguments of counsel for both parties. The plaintiff counsel in addition to his oral submission has also filed his written argument.

19. The findings of this court on aforesaid issues are as under:

**Issue No.1 :- In Affirmative**

**Issue No.2 :- In Affirmative**

**Issue No.3 :- In Negative**

**Additional Issue :- In Negative  
No.1**

**Issue No.4 to 6 :- The plaintiff and his branch members are together entitle for 1/3<sup>rd</sup> share, the defendant No.1(a) to 1(l) including all their branch members are together entitle for 1/3<sup>rd</sup> share, defendant No.2 to 7 including the legal heirs of their branch are together entitle for 1/3<sup>rd</sup> share over suit schedule properties.**

**Issue No.7 :- As per final order for the following:**

**REASONS**

**ISSUE Nos.1 to 3 :**

20. All these issues are inter connected each other and in order to avoid the repetition of the facts and appreciation of evidence, all these issues are taken up together for common discussion.

21. It is the specific case of the plaintiff that, his grandfather by name Late.Gujjanayaka, defendant No.1 and husband of defendant No.2 are the brothers and suit schedule properties are their ancestral joint family properties. It is further case of the plaintiff that even though the said Gujjanayaka, defendant No.1 and husband of defendant No.2 are cultivating the suit schedule properties equally but there was no partition took place between the grandfather of the plaintiff by name Gujjanayaka and his two brothers. The plaintiff in order to establish his aforesaid contention, he himself got examined before this court as PW-1 and reiterated the averments made in the plaint. The plaintiff has also produced and got marked documentary evidence as per the Ex.P1 to Ex.P14.

22. On the other hand the original defendant No.1 has admitted the plaint averments and further admitted that the suit schedule properties are liable to be divided into three fair and equal shares. The legal heir of original defendant No.1 who is defendant No.1(a) got examined as DW-1 and produced documentary evidence as per Ex.D1 and Ex.D2.

23. The contesting defendant No.2 to 6 have taken up the defence that the plaintiff is not the grandson of Gujjanayaka and there is no relationship between the plaintiff and said Gujjanayaka. It is also the defence of the said defendants that the plaintiff and his family members have already got their share during life time of the father of the plaintiff and therefore again question of making fresh partition does not arise. The defendant No.2 to 6 in order to prove their defence, the defendant No.6 got examined as DW-2 and produced documentary evidence as per Ex.D3 to Ex.D43.

24. The initial burden lies upon the plaintiff to establish that they along with the defendants are the joint family members and to establish the family genealogy stated by him in the plaint. Since the defendant No.2 to 6 have denied the relationship between themselves and plaintiff, the initial burden lies upon the plaintiff to establish the family genealogy. The plaintiff in his oral evidence and in the pleadings has stated that one Late.Gujjanayaka is his grandfather and he got two brothers who are defendant No.1 and husband of defendant No.2 by name Kempanayaka. The original defendant No.1 in his pleadings has admitted the said family genealogy stated by the plaintiff in the plaint. It is the defendant No.2 to 6 who are the legal heirs of Kempanayaka have denied their relationship with the plaintiff. On same line the counsel for defendant No.2 to 6 have cross-examined the PW-1 and on careful perusal of entire cross-examination of PW-1, the counsel for defendant No.2, 4 to 6 has not suggested any suggestion that the plaintiff is not the grandson of said Gujjanayaka. The counsel for defendant No.2,

4 to 6 himself suggested that the great grandfather of plaintiff is Gujjanayaka and the elder son's name of said Gujjanayaka is also Gujjanayaka. The relevant suggestion put by the counsel reads like this” ನನ್ನ ಅಜ್ಜನ ತಂದೆ ಹೆಸರು ಸಹ ಗುಜ್ಜನಾಯಕ ಎಂದರೆ ಸರಿ. ನನ್ನ ಮುತ್ತಜ್ಜನ ಕೊನೆ ಮಗ ಅದು ಗುಜ್ಜನಾಯಕ'. On perusal of the said suggestion put by counsel for contesting defendants, the counsel himself suggested that the great grandfather's name of plaintiff is Gujjanayaka. The said suggestion itself reveals that the contesting defendant No.2, 4 to 6 have admitted the relationship between themselves and plaintiff. Moreover on careful perusal of the entire cross-examination of PW-1, there is no specific suggestion put by the contesting defendants that the plaintiff is not the family member of the defendant and there is no relationship between themselves and defendants. Moreover on perusal of the written statement filed by the contesting defendant No.2, 4 to 6 they have pleaded that the father of the plaintiff by name Gujjanayaka during his life time have taken his share in the suit schedule properties. If there is no relationship between the family of plaintiff and defendants, then question of taking alleged share by the father of plaintiff does not arise. The contesting defendants by way of their said pleadings have directly admitted their relationship with the plaintiff.

25. On perusal of the cross-examination of DW-2, who is defendant No.6 he deposed that there was already family partition took place between the family of plaintiff and defendants. When the DW-2 in his oral evidence also deposed

that there was already family partition took place between the plaintiff and defendants, then the DW-2 by way of his oral evidence also admitted his relationship with plaintiff.

26. As it is discussed above, the defendant No.1 in his written statement has admitted the family genealogy stated by the plaintiff in the plaint. The defendant No.1(a) got examined before this court as DW-1 and he was subjected to cross-examination by the counsel for contesting defendant No.2, 4 to 6 and on careful perusal of the cross-examination of DW-1 also the contesting defendant No.2, 4 to 6 have not denied the family genealogy stated by the plaintiff in the plaint and there is no any specific suggestion put by the counsel for contesting defendant No.2, 4 to 6 that family genealogy stated by the plaintiff in the plaint is not correct. Therefore the plaintiff by way of oral evidence and also by way of said admissions as discussed above from the mouth of DW-2 as well as from his pleadings has established the family genealogy stated by the plaintiff in the plaint.

27. Now the question to be considered is about the joint family nature of suit schedule properties. As per the case of the plaintiff suit schedule properties are the ancestral joint family properties of plaintiff and defendants. The plaintiff to establish the existence of suit schedule properties, he produced Ex.P1 which is the computerized RTC in respect of item No.1 of schedule property and on perusal of said RTC, the name of original defendant No.1 and husband of defendant No.2 is mutated to an extent of 2 acre 19 gutnas and 2 acre 18 guntas

each as per MR – ICR-30/1980-81. Further the plaintiff has produced Ex.P13 which is the RTCs relating to item No.2 of property bearing Sy.No.48/1 measuring 20 guntas stands in the name of husband of defendant No.2. Further the plaintiff has produced RTC bearing Sy.No.48/2 measuring 1 acre 21 guntas which jointly stands in the name of grandfather of the plaintiff, original defendant No.1 and husband of defendant No.1. In column No.10 of said RTC there is entry about inheritance (ಪಿತ್ತಾಚೀತ). Further the plaintiff has also produced RTC bearing Sy.No.48/4 measuring 21 gutnas which jointly stands in the name of aforesaid three persons. The plaintiff has also produced the handwritten RTC in respect of item No.1 and 2 of schedule properties as per Ex.P4 to Ex.P8. On perusal of said handwritten RTC it reveals that, earlier the item No.1 and 2 of schedule properties were stands in the name of one Gujjanayaka who is the grandson of Gujjari and after his death the schedule properties were mutated in the name of grandfather of the plaintiff by name Gujjanayaka, original defendant No.1 and husband of defendant No.2 as per MR – ICR-30/1980-81. The plaintiff has also produced index of land, record of rights as per Ex.P9 to Ex.P12 and on perusal of said documents, earlier the suit schedule properties were stands in the name of Gujjanayaka who is the grandson of Gujjari. The plaintiff has also produced the mutation extract in MR – ICR-30/1980-81 as per Ex.p2 and on perusal of said document it reveals that after the death of Gujjanayaka who is the grandson of Gujjari, the katha relating suit schedule properties were mutated in the name of Gujjanayaka, Konanayaka and

Kempanayaka. Further the said Ex.P2 reveals that the katha has been mutated on the basis of succession (ಪೌತಿಖಾತಾ). The Ex.P2 further reveals that the father's name of Konanayaka and Kempanayaka has been stated as Doddakempanayaka. The plaintiff and DW-1 in their oral evidence has stated that in the said mutation extracts and handwritten RTCs the father's name of defendant No.1 and husband of defendant No.2 is wrongly mentioned as Doddakempanayaka instead of Gujjanayaka. On careful perusal of the afore discussed documents they prima facie reveals that the suit schedule properties originally belonged to one Gujjanayaka who is the grandson of Gujjari and after his death the katha relating to schedule properties were mutated in the name of Gujjanayaka who is the grandfather of the plaintiff, Konanayaka who is the original defendant No.1 and Kempanayaka who is the husband of defendant No.2.

28. On the other hand the contesting defendant No.2, 4 to 6 have also produced similar handwritten RTC as per Ex.D3 to Ex.D22 for various years and the said handwritten RTCs further clarifies that earlier the suit schedule properties were stands in the name of Gujjanayaka who is the grandson of one Gujjari and after his death, the schedule properties were mutated in the name of grandfather of the plaintiff by name Gujjanayaka, original defendant No.1 by name Konanayaka and husband of defendant No.2 by name Kempanayaka. Further in column No.10 of the said handwritten RTCs ,there is entry about inheritance (ಪಿತ್ತಾಜಿಫತ). The said contesting defendants

have produced Ex.P14 and Ex.P19 which are the handwritten RTCx in respect of property bearing Sy.No.48/3 but the plaintiff in the plaint has not included the said property. Even though the contesting defendants have produced the handwritten RTCs in respect of property bearing Sy.No.48/3 but they have not produced the present computerized RTC in respect of said property bearing Sy.No.48/3. Since the plaintiff has not included the said property in the present suit and it is not the defence of the contesting defendants that the said property is not included in the present suit, much discussion about the documents in respect of said property is not required.

29. The contesting defendants have also produced the present computerized RTCs in respect of suit schedule properties, mutation extract in ICR-30/1980-81, index of land and record of rights. The said documents are similar to the documents produced by the plaintiff. The documentary evidence produced by the plaintiff as well as contesting defendants reveals that earlier the item No.1 and 2 of schedule properties were stands in the name of one Gujjanayaka (grandson of Gujjari) and after his death the schedule properties were mutated in the name of grandfather of the plaintiff by name Gujjanayaka, original defendant No.1 and husband of defendant No.2. The plaintiff by producing the aforesaid documents has prima facie established about existence of suit schedule properties and its flow of title.

30. The defendants have taken upon the specific defence that there was already partition took place in respect of suit

schedule properties and during life time of father of the plaintiff, they have received their share in suit schedule properties. Based on the said pleadings the issue No.3 has been framed by this court. The burden lies upon the defendants to establish that there was already partition took place between the plaintiff and defendants in respect of suit schedule properties. On careful perusal of pleadings of defendants they have not pleaded that on what date the said earlier partition was took place and whether the said partition was in the form of writing or it was in oral. The contesting defendants have baldly pleaded about earlier partition but they have not pleaded the date on which alleged partition was took place and which properties were allotted to the sharers. As it is discussed above the plaintiff in his pleadings has stated that the plaintiff and defendants are cultivating the schedule properties equally. Even though the plaintiff has pleaded the said fact that they are cultivating the suit schedule properties equally but it is not the case of the plaintiff that the schedule properties are already partitioned between the plaintiff and defendants.

31. The burden lies upon the defendants to establish that there was earlier partition took place between the plaintiff and defendants and the said partition was acted upon. As it is discussed above, the plaintiff as well as the contesting the defendants have produced the handwritten and present RTCs in respect of suit schedule properties and also produced the mutation extract in ICR-30/1980-81. No doubt on perusal of the said RTCs and mutation extract, the name of grandfather of the plaintiff by name Gujjanayaka, original defendant No.1 by

name Konanayaka and husband defendant No.2 Kempanayaka were mutated to the portion of the land in suit schedule properties but there is clear entry in handwritten RTCs as well as in the computerized RTC in column No.10 about the inheritance. The mutation extract produced by both parties also reveals that the katha relating to schedule properties were mutated in the name of aforesaid three persons on the basis of inheritance(ಪಿತ್ತಾಜ್ಞೆ) and not on the basis of partition. The plaintiff has produced the mutation extract in ICR-30/1980-81 as per Ex.P2. On the other hand the contesting defendants have also produced the similar mutation extract as per Ex.P36 and in the said document there is no entry about partition took place between the aforesaid three persons and on the basis of partition, the name of said three share is were entered in the revenue records.

32. Now it is necessary to peruse the oral evidence of both parties in order to conclude about the alleged prior partition as alleged by the defendants. The counsel for contesting defendants has cross-examined PW-1 and on perusal of his cross-examination, he admitted that he pleaded that the schedule properties were equally divided between the plaintiff and defendants. On careful perusal of the entire cross-examination of PW-1, he denied about the earlier partition took place as alleged by the defendants but the said admission made by the PW-1 during his cross-examination dated 09.06.2022 is a stray admission and his entire oral evidence reveals that he has denied the earlier partition took place between the family of

plaintiff and defendants. Since the plaintiff himself pleaded that the plaintiff and defendants are cultivating the schedule properties equally and by taking into said fact in mind, the PW-1 might have deposed the said stray admission that the plaintiff and defendants are equally divided and cultivating the schedule properties. Even though the said stray admission is taken into consideration but documentary evidence prevails over oral evidence. As it is discussed above, the mutation extracts produced by both parties itself reveals that the name of grandfather of the plaintiff by name Gujjanayaka, original defendant No.1 and husband defendant No.2 is entered on the basis of succession and not on the basis of partition.

33. Now it is necessary to peruse the oral evidence of DW-2 who is the defendant No.6, categorically deposed that he got no document to show that there was earlier partition took place between the family of plaintiff and defendants and he also admitted that he has not produced any RTCs to show that on the basis of said partition, the katha was changed. The relevant admission made by DW-2 reads like this “ಹಿಂದೆಯೇ ವಿಭಾಗವಾಗಿರುತ್ತದೆ ಎಂದು ತೋರಿಸಲು ಯಾವುದೇ ದಾಖಲಾತಿಯನ್ನು ನ್ಯಾಯಾಲಯಕ್ಕೆ ಹಾಜರುಪಡಿಸಿರುವುದಿಲ್ಲ. ವಿಭಾಗವಾಗಿ ಖಾತೆ ಬದಲಾವಣೆಯಾಗಿರುವ ಬಗ್ಗೆ ಯಾವುದೇ ಪಹಣಿಯನ್ನು ಹಾಜರುಪಡಿಸಿರುವುದಿಲ್ಲ“. On perusal of the said admission made by the DW-2 he himself admitted that he got no document to show the earlier partition took place as pleaded by him. If there was already partition took place as alleged by defendant No.2, 4 to 6, then sharers might have mutated their name on the basis of

alleged partition. Hence on careful perusal of entire oral and documentary evidence produced by both parties, the contesting defendants have failed to establish the prior partition as alleged by them.

34. On careful appreciation of entire oral and documentary evidence produced by both parties this court comes to the conclusion that the suit schedule properties are the ancestral joint family properties of plaintiff and defendants which are available for partition. On the other the contesting defendants have failed to establish the prior partition as alleged by them. Hence for the said reasons, this court answers Issue Nos.1 and 2 in Affirmative and Issue No.3 in Negative.

**ADDITIONAL ISSUE No.1:**

35. The defendant No.2, 4 to 6 in their written statement have take up the specific defence that the suit of the plaintiff is bad for non joinder of necessary parties. The said defendants in paragraph No.2 of their written statement has stated that the father of the plaintiff by name Late.Gujjanayaka was died on 18.08.2011 by leaving behind his legal heirs but the plaintiff has not made all the legal heirs of the father of the plaintiff as parties to the suit. On careful perusal of the entire pleadings of the contesting defendant No.2, 4 to 6, except said pleadings of impleading of the legal heirs of father of plaintiff, the defendants have not pleaded about non inclusion of any other parties. On perusal of the plaint, the plaintiff has pleaded that he filed the present suit to claim the share of his father and he further pleaded that his father got one daughter and five sons. The

plaintiff in his pleadings itself pleaded that on behalf of all the legal heirs of his father, the plaintiff has filed the suit. Now the question to be considered is whether the suit is bad for non joinder of necessary parties. As it is discussed above, the plaintiff himself in his pleadings has pleaded that he filed the present suit to obtain the share of his father on behalf of all the legal heirs of his father. Therefore even though the plaintiff has not included his brothers and sisters but since the plaintiff has pleaded that he filed the suit to claim the share of his father, then non inclusion of all the legal heirs of father of the plaintiff by name Gujjanayaka itself is not the ground to dismiss the suit on the ground that the suit is bad for non joinder of necessary parties. If the this court comes to the conclusion that the plaintiff is entitle for share over the schedule properties, then such share may allotted to all the legal heirs of deceased Gujjanayaka who is the father of the plaintiff.

36. As it is discussed above the defendant No.2, 4 to 6 in their written statement except pleading that all the legal heirs of father of plaintiff is not included in the present suit, they have not pleaded that any other parties are left out by without including to the present suit.

37. Now it is necessary to peruse the oral evidence of all the parties in order to conclud that whether the suit of the plaintiff is hit by partial partition. On perusal of the cross-examination of PW-1 he admitted that his grandfather by name Gujjanayaka has also got daughters but they have not included in the suit. Even though the PW-1 in his cross-examination admitted that

he does not include the daughters of said Gujjanayaka but the defendant No.2, 4 to 6 have not pleaded that the said Gujjanayaka also got daughters and they have not been made as parties. It is settled principle of law that a party cannot go beyond his pleadings. Therefore the suggestion put by the counsel for contesting defendant No.2, 4 to 6 without pleadings is no evidence in the eye of law and same cannot be taken into consideration. On perusal of the cross-examination of DW-1 who is defendant No.1(a) he also admitted that his sisters are not included in the present suit after the death of original defendant No.1 but the contesting defendant No.2, 4 to 6 have not elicited that the persons who are left out without impleading as parties. As it is discussed above the defendant No.2, 4 to 6 have not pleaded any fact that all the legal heirs of deceased defendant No.1 are not impleaded. Therefore even though the DW-1 has admitted some stray admission that the children of his deceased brothers are not included in the present suit but there is no pleadings by the contesting defendant No.2 4 to 6 and if this court comes to the conclusion that the original defendant No.1 is entitle for share in the schedule properties, then it may be allotted to all his legal heirs. Therefore on careful perusal of the entire and documentary evidence produced by both parties this court comes to the conclusion that the defendant No.6 has failed to establish that the suit is bad for non joinder of necessary parties. Even if it is considered that the plaintiff has not included all the legal heirs of his father and if some legal heirs of deceased defendant No.1 are left out but the court may grant the share to the branches and

therefore the absence of any such legal heirs does not cause any hardship to both parties. Therefore this court comes to the conclusion that the defendant No.2, 4 to 6 have failed to establish that the suit of the plaintiff is bad for non joinder of necessary parties. Hence for the said reasons, this court answers Additional Issue No.1 in Negative.

**ISSUE Nos.4 to 6:**

38. All these issues are inter connected each other and in order to avoid the repetition of the facts and appreciation of evidence, all these issues are taken up together for common discussion.

39. The plaintiff has claimed that he is entitle for 1/3<sup>rd</sup> share over suit schedule properties. On the other hand the defendants have taken up the specific defence that the schedule properties were already got partitioned between the family members of plaintiff and defendants. It is already concluded above that the plaintiff has established the joint family nature of himself and defendants and also established that the schedule properties are the ancestral joint family properties. As it is discussed above, the plaintiff in his pleadings has pleaded that his father got six children and his mother is still alive. Since the plaintiff has pleaded that he filed the present suit to claim the share of his father, then the share which should be allotted in favour of the plaintiff should be allotted to his branch. Similarly the property which should be allotted to the legal heirs of original defendant No.1, the same should be allotted to all the legal heirs of deceased defendant No.1 and to

his branch. Similarly the property which should be allotted to the defendant No.2 to 7 being the legal heirs of deceased Kempanayaka should be allotted to their branch. Therefore the plaintiff and his branch members are together entitle for 1/3<sup>rd</sup> share, the defendant No.1(a) to 1(l) including all their branch members are together entitle for 1/3<sup>rd</sup> share, defendant No.2 to 7 including the legal heirs of their branch are together entitle for 1/3<sup>rd</sup> share over suit schedule properties. Hence the issue No.4 to 6 are answered in accordingly.

**ISSUE No.7:**

40. In the light of afore said discussion, this court proceeds to pass the following:

**ORDER**

**The suit of the plaintiff for the relief of partition and separate possession is hereby decreed in following terms:**

**The plaintiff and all the legal heirs of his father being one branch are together entitle for 1/3<sup>rd</sup> share, the defendant No.1(a) to 1(l) and other members of their branch are together entitle for 1/3<sup>rd</sup> share, the defendant No.2 to 7 and their branch together entitle for 1/3<sup>rd</sup> share over suit schedule properties by metes and bounds.**

**There shall be final decree for partition of suit schedule properties as per section 54 of CPC.**

**By considering the nature of the suit and the relationship between the parties, they should bear their own cost.**

**Office to Draw Preliminary Decree accordingly and register a final decree proceedings as per the judgment passed by Hon'ble Supreme Court of India in Civil Appeal No. 6406/2010–Kattukandi Edathil Krishnan and another Vs Kattukandi Edathil Valsan and others.**

(Dictated to the Stenographer, transcribed by him on computer, revised, corrected and then pronounced by me in the open Court on this the 3<sup>rd</sup> day of April, 2024)

**(Sandesh Prabhu. B)  
Senior Civil Judge & J.M.F.C  
H.D.Kote**

### **A N N E X U R E**

**List of witnesses examined by the plaintiff/s:**

PW.1 : Sathyaraju

**List of witnesses examined by the defendant/s:**

DW.1 : Konanayaka

DW.2 : Chamanayaka

**List of documents marked by the plaintiff/s:**

Ex.P1 : Certified copy of computerized RTC

Exs.P2 & 3 : Certified copies of M.R. registers

Exs.P4 & 12 : Certified copies of handwritten RTCs

- Exs.P13 to15 : Certified copies of computerized RTCs  
Ex.P16 : Certified copy of encumbrance certificate

**List of documents marked by the defendant/s:**

- Ex.D1 : Certified copy of handwritten RTC  
Ex.D2 : Original copy of death certificate  
Exs.D3 to 22 : Certified copies of handwritten RTCs  
Exs.D23 to27 : Certified copies of computerized RTCs  
Ex.D28 : Certified copy of tax paid receipt  
Ex.D29 : Patta book  
Exs.D30 to35 : Certified copies of computerized RTCs  
Exs.D36 to 40 : Certified copies of M.R. registers  
Exs.D41 to 43 : Certified copies of index of land

**(Sandesh Prabhu. B)**  
**Senior Civil Judge & J.M.F.C**  
**H.D.Kote**