

KAMS210008212015



**IN THE COURT OF THE I ADDITIONAL CIVIL JUDGE
AND J.M.F.C., AT H.D.KOTE**

:PRESENT:

SRI.SANTHOSHA KOTARI, B.A.L.LL.B.,
Prl. Civil Judge & JMFC., H.D.Kote.
C/c I Addl. Civil Judge & JMFC., H.D. Kote.

Dated this the 1st day of April 2026

ORIGINAL SUIT NO.240/2015

PLAINTIFF

Sri.R.Prabhakar,
S/o.Ramachandra,
Aged about 28 years,
Residing at No.500/1,
Church Street, Chikkamalur Village,
Channapatna Town,
Channapatna Taluk,
Ramanagara District.

(By Sri.P.Nagendra, Advocate)

V/S

DEFENDANTS

- 1 Sri.Ramachandra,
S/o.Late.Ramaswamy,
Aged about 60 years,
(Since Dead and his LRs the
plaintiff and defendants No.2 and 3
are already on record)
- 2 Sri.R.Ravikumar,
S/o.Ramachandra,
Aged about 25 years,

- 3 Sri.R.Ajay Kumar,
S/o. Ramachandra,
Aged about 22 years,
Defendant No.1 to 3 are
Residing at No.500/1,
Church Street,
Chikkamalur Village,
Channapatna Town,
Channapatna Taluk,
Ramanagara District.
- 4 Sri.Dharmalingaiah
S/o.Late.Ramaswamy
Since Dead by his LRs
- 4(a) Smt.Indramma,
W/o.Late.Dharmalingaiah,
Aged about 58 years,
- 4(b) Sri.D.Shivakumar,
S/o.Late.Dharmalingaiah,
Aged about 30 years,
- 4(c) Sri.D.Nandan Kumar,
S/o.Late.Dharmalingaiah,
Aged about 28 years,

All are residing at Kootaluru Street,
Chikkamaluru Village,
Channapatna Town,
Channapatna Taluk,
Ramanagara District.
- 4(d) Smt.Bhavani.D,
W/o. Appu,
Aged about 26 years,
Residing at Patecheri Village,
Channapatna Town,
Channapatna Taluk,
Ramanagara District.
- 5 Sri.Krishnamurthy,
S/o.Late.Ramaswamy,

Aged about 57 years,
Residing at No.111, Thattekere
Street, Kalanagara,
Channapatna Town,
Channapatna Taluk,
Ramanagara District.

6 Sri.R.Krishna
S/o.Late. Ramaswamy,
Aged about 54 years,
R/at at No.21/369,
Koodaluru Street,
Chikkamaluru Village,
Channapatna Town,
Channapatna Taluk,
Ramanagara District.

7 Sri.Nanjappa,
S/o.Late.Ramaswamy,
Since Dead by his LRs

7(a) Smt.Jayanthi.V.,
W/o.Late.Nanjappa,
Aged about 55 years,

7(b) Sri.Vinay N,
S/o.Late.Nanjappa,
Aged about 30 years
Residing at 5th Cross, Jnanabharathi
Road, Ullala Upanagara,
Bengaluru – 560056.

**(D2 and 3 by Sri.KS.Mohan,Advocate,
D4(a) to 4(d) by Sri.B.Venkata Swamy
and Lokesh, Advocates, D5 and 6 by
Venkatesh H.G, Advocate,
D7(a) and 7(b) by Chandrakantha C,
Advocate)**

Date of Institution	09.07.2015
Nature of the Suit	PARTITION AND SEPARATE POSSESSION
Date of Commencement of	02.12.2024

recording of Evidence	
Date of Pronouncement of Judgment	01.04.2026
Total Duration	Year/s Month/s Day/s 10 08 22

(SANTHOSHA KOTARI)
C/c I Addl. Civil Judge & J.M.F.C.,
H.D.Kote.

J U D G M E N T

This suit is filed by the plaintiff against the defendants for the relief of Partition and Separate possession of his legitimate share in the share of defendant No.1 in the suit schedule property and Mesne profits and other allied reliefs.

2. The description of the suit schedule property involved in the above suit is as follows:

SUIT SCHEDULE PROPERTY

All that piece and parcel of the land bearing Survey No.1/458 measuring 06 acres 06 guntas, situated at Padukotekaval Village, Kasaba Hobli, H.D.Kote Taluk, and same is bounded on:

East By : Land belonged to Nayak,
West By : Government Land,
North By : Road and Land belonged to Pothraj,
South By : Land belonged to Ramalingam.

3. The brief facts of the plaintiff's case are as under:

According to plaintiff, defendant No.1 is his father, defendant No.2 and 3 are his brothers. The defendant No.1, 4 to 7 are the children of Late.Ramaswamy. The plaintiff and defendants constitute undivided joint family and the suit schedule property is their undivided joint family property. The Katha of suit schedule property stands in the name of his uncle i.e., the defendant No.4 Sri.Dharmalingaiah. The plaintiff and defendants are in joint possession and enjoyment of the suit schedule property and they jointly cultivating the same. During the joint family, the grand father of plaintiff and father of the defendant No.1, 4 to 7 by name deceased Ramaswamy was suffering from ill health, as such, the defendant No.4 was acting as Kartha of the joint family and looking after all the affairs of the family. During the joint cultivation of suit schedule property by the defendant No.1, 4 to 7, the land measuring to an extent of 6 acre 20 guntas was granted on behalf of the entire family in the name of the defendant No.4 who being the Kartha of the joint family vide LND 1/17.04.1974 on the consent of all the joint family members. Since the date of grant, the plaintiff and defendants are in joint possession and enjoyment and jointly cultivation the suit schedule property. Thereafter, on 22.07.2005 the defendant No.4 got rectified the measurement of the suit schedule property from 6 acres 20 guntas to 6 acres 6 guntas by submitting application to

Thahasildar, H.D. Kote. Thereafter he was trying to alienate the suit property in favor of third parties. During the lifetime of Late.Ramaswamy, the suit schedule property remained as joint family property of the plaintiff and defendants and after his death also, they are in joint possession of the suit property. When the plaintiff has demanded the defendant No.1 to allot his separate share in the suit schedule property, the defendant No.1 has refused the said request. Hence, the plaintiff has constrained to file the present suit against the defendants.

4. After registering the suit, suit summons was issued to the defendants and the defendants have appeared through their Counsel. Thereafter, during pendency of the above suit, the defendant No.1, 4 and 7 have died and since legal heirs of deceased defendant No.1 i.e., the plaintiff and the defendants No.2 and 3 were already on record, necessary amendment was carried in the plaint. Further, the legal heirs of deceased defendant No.4 and 7 were brought on record. Though the defendant No.1 to 3 and 5 to 7 have appeared through their counsel, they have not filed any written statement denying the claim of the plaintiff. The legal heirs of deceased defendant No.4 i.e., defendant No.4(a) to (d) have filed detailed written statement denying the plaint averments. The defendant No.4(a) to (d) in their written statement have denied the averments made in the plaint and stated that

the suit filed by the plaintiff is not maintainable either in law or on facts, hence same is liable to be dismissed. The suit filed by the plaintiff is bad for non-joinder of necessary parties, hence it is liable to be dismissed. The boundaries of suit schedule property mentioned in the plaint is not correct and proper. The plaintiff is not valued the suit schedule property properly and Court fee paid by the plaintiff is insufficient. Further, they denied the genealogy tree and relationship of plaintiff and deceased defendant No.4.

5. It is submitted that suit schedule property is self acquired property of deceased defendant No.4. He was in possession and enjoyment of the suit schedule property and he was personally cultivated the same along with his wife and children till his death. After his death, the defendants No.4(a) to (d) are in possession and enjoyment of schedule property, as such, they are absolute owners of the suit schedule property. Except the defendants No.4(a) to (d) nobody else are in possession and enjoyment of the suit schedule property. It is further submitted that, the suit schedule property is not joint family of the plaintiff and defendants and it is self acquired property of deceased defendant No.4 and in no point of time the plaintiff and defendants were living in joint family. During time of allotment of suit schedule property, grand father of plaintiff namely Ramaswamy was not in ill health, he was

in government service and deceased defendant No.4 was not managing the family as Kartha at any point of time. In fact suit schedule property is self acquired property of deceased defendant No.4 and from the date of allotment to till his death, the deceased defendant No.4 was only in possession and enjoyment of the suit schedule property.

6. It is submitted that during the life time of Ramaswamy who is grand father of plaintiff and defendants No.2 and 3 and father of defendants No.1, 4 to 7, was in service and employee of State Government of Karnataka. During the time of allotment of suit schedule property to deceased defendant No.4, the said Ramaswamy was working at Channapattana Town, Ramanagara District. The suit schedule property is not allotted to grand father of plaintiff namely Ramaswamy. It is further submitted that from the time of childhood of deceased defendant No.4, there was lot of misunderstanding arises and took place between the defendant No.4 and his father. Hence without any alternative and for his better future life, he left his parents house before to 1970 itself. After leaving his parents house, he came and started to live at Paduvakotekaval Village, Kasaba Hobli, H.D. Kote Taluk, separately from his parents, brothers and sisters. Thereafter he capture the suit schedule property area and clean the same and he started to cultivate the same. From the date of capturing of suit schedule property except

deceased defendant No.4, no one is in possession and enjoyment of the same. Then after holding proper enquiry, the Tahasildar of H.D. Kote, has granted the suit schedule property to the deceased defendant No.4 during the year 1974-75. Since the date of said grant, the deceased defendant No.4 became the absolute owner of suit schedule property. Since the date of grant he was in possession and enjoyment of schedule property along with his wife and children till his death and the Katha of suit schedule property stands in the name of deceased defendant No.4 only and he was regularly paying tax in respect of the suit schedule property to the concerned authority. After his death, the defendants No.4(a) to (d) are only in possession and enjoyment of suit schedule property. It is further submitted that during the year 2011, one Sri.M. Ramachandra, the defendant No.1, who is the father of the plaintiff and defendant No.2 and 3, was filed a suit against deceased defendant No.4 and others for the relief of Partition and Separate Possession in respect of the suit schedule property, before Civil Judge and J.M.F.C., at H.D. Kote, in O.S. No.179/2011. During the pendency of above said suit, the plaintiff of said suit has filed Memo seeking to dismiss the suit as not pressed. Accordingly, on 29.01.2013 the said suit in O.S. No.179/2001 was dismissed. After dismissal of the said suit in O.S.No.179/2011, now, the plaintiff who is son of

defendant No.1 has filed this suit for relief of partition and separate possession of the suit schedule property. It clearly shows that, the plaintiff and children of defendant No.1 i.e., defendant No.2 and 3 and other defendants i.e., the defendants No.5 to 7 are colluding with each other with an intention to grab the suit schedule property. For all these reasons, they prayed to dismiss the suit with cost.

7. On the basis of the pleadings of the parties, this court has framed the following;

ISSUES

1. *Whether the plaintiff proves that plaintiff and defendants are the members of the Hindu undivided joint family?*
2. *Whether the plaintiff proves that the suit schedule property is the joint family property of the plaintiff and defendants?*
3. *Whether the LRs of the defendant No.4 prove that the suit schedule property was the self acquired property of Dharmalingaiah?*
4. *Whether the plaintiff is entitled for the relief sought for, if yes, to what extent?*
5. *What order or decree?*

8. In order to prove his case, the plaintiff examined himself as PW-1 and produced as many as 3 documents and they are marked as Ex.P1 to Ex.P3. Further, the plaintiff in support of his case also examined two more

witnesses as PW-2 and 3. On the other hand there is no oral or documentary evidence on behalf of the defendant.

9. Heard counsel for plaintiff on merits. However, despite of giving sufficient time, the defendants remained absent and not addressed their argument on merits. Perused entire materials on record.

10. My findings to the above Issues are as under:

Issue No.1: In the Affirmative,
Issue No.2: In the Affirmative,
Issue No.3: In the Negative,
Issue No.4: Partly in the Affirmative,
Issue No.5: As per the final order
for the following;

REASONS

11. Issue No.1 to 3: These three issues are taken up together for consideration as they are interlinked with each other and based on same evidence to avoid the repetition of facts and reasonings.

12. The plaintiff in order to prove that himself and defendants are joint family members and the suit schedule property is their joint family property and there was no partition in respect of the said property in their joint family, the plaintiff examined himself as PW-1 and he filed affidavit in lieu of his examination in chief by deposing that the defendant No.1 is his father, defendant No.2 and 3 are his brothers. The defendant No.1, 4 to 7 are the

children of Late.Ramaswamy. Himself and the defendants constitute undivided joint family and the suit schedule property is their undivided joint family property. The Katha of suit schedule property stands in the name of his uncle i.e., deceased defendant No.4 Sri.Dharmalingaiah. Himself and defendants are in joint possession and enjoyment of the suit schedule property and they jointly cultivating the same. During the joint family, his grand father and father of the defendant No.1, 4 to 7 by name deceased Ramaswamy was suffering from ill health, as such, the defendant No.4 was acting as Kartha of the joint family and looking after all the affairs of the family. During the joint cultivation of suit schedule property by the defendant No.1, 4 to 7, the land measuring to an extent of 6 acres 20 guntas was granted on behalf of the entire joint family in the name of the defendant No.4 who being the Kartha of the joint family vide LND 1/17.04.1974 on the consent of all the joint family members. Since the date of grant, himself and defendants are in joint possession and enjoyment and jointly cultivation the suit schedule property. Thereafter, on 22.07.2005 the defendant No.4 got rectified the measurement of the suit schedule property from 6 acres 20 guntas to 6 acres 6 guntas by submitting application to Thahasildar, H.D. Kote. Thereafter he tried to alienate the suit property in favor of third parties. During the lifetime of his grand father

Late.Ramaswamy, the suit schedule property remained as joint family property of himself and defendants and after his death also, they are in joint possession of the suit property, as such, he has legitimate share in the suit schedule property. Further, the PW-1 in support of his oral evidence has also produced as many as many as 03 documents and they are marked as Ex.P1 to P3. Ex.P1 and P2 are RTC extracts in respect of suit schedule property for the period 2013-14 and 2014-15 which stands in the name of the deceased defendant No.4 and Ex.P3 is mutation register extract in respect of suit schedule property for the period 2005-06 which stands in the name of the deceased defendant No.4.

13. It is pertinent to mention here that the plaintiff in his pleadings i.e., in para 2 of plaint has specifically stated the family/genealogy tree of deceased Ramaswamy. It discloses that plaintiff and the defendant No.2, 3, 4(b) to 4(d) and 7(b) are grand children and the deceased defendant No.1, 4, 7 and defendant No.5 and 6 are the children of deceased Ramaswamy and Smt. Sundaramma. It further discloses that the plaintiff and defendants are legal heirs of deceased Ramaswamy and they are joint family members. Further, the defendants have not specifically denied the said genealogy/family tree and relationship narrated by the plaintiff in their pleading.

Thus plaintiff has proved that himself and defendants constitute Hindu undivided joint family.

14. Further the plaintiff/PW-1 in order to prove the suit schedule property is their joint family property has produced certified copy of RTC extracts in respect of suit schedule property for the period 2013-14 and 2014-15 and mutation register extract in respect of suit schedule property for the period 2005-06. On perusal of said documents it reveals that the suit schedule property is standing in the name of deceased defendant No.4 as the Katha of the suit schedule property got changed in his name vide MR No.27/2005-06 based on the grant made in his name during 1976-77 and accordingly, his name is entered in column No.9 and 12 of the RTC and same is forthcoming in the RTC extracts at Ex.P1 and 2. Thus, the documents produced by the plaintiff shows that originally the suit schedule property was government land and same was granted in the name of deceased defendant No.4. The plaintiff has also not denied said fact. However, it is his contention that himself and the defendant No.2, 3, 4(b) to 4(d) and 7(b) are grand children and the deceased defendant No.1, 4, 7 and defendant No.5 and 6 are the children of deceased Ramaswamy and they constitute an undivided joint family and the suit schedule property is their undivided joint family property and they are in joint possession and enjoyment of the suit schedule property

and they jointly cultivating the same. During the joint family, his grand father and father of the defendant No.1, 4 to 7 by name deceased Ramaswamy was suffering from ill health, as such, the defendant No.4 was acting as Kartha of the joint family and looking after all the affairs of the family. During the joint cultivation of suit schedule property by the defendant No.1, 4 to 7, the suit schedule property was granted on behalf of the entire joint family in the name of the defendant No.4 who being the Kartha of the joint family vide LND 1/17.04.1974 on the consent of all the joint family members. Since the date of grant, himself and defendants are in joint possession and enjoyment and jointly cultivating the suit schedule property. It is pertinent to mention here the defendant No.1 to 3 and 5 to 7 have not denied the said fact by filing their written statement or cross examining the PW-1 to 3. Further it is pertinent to mention here that though defendant No.4(a) to (d) have denied the said fact in their written statement and taken a contention that the suit schedule property is the self acquired property of husband of defendant No.4(a) and father of the defendant No.4(b) to (d) i.e. deceased defendant No.4, as the same was granted in his individual name, however, they have not taken any pain to prove the said fact either by cross examining the PW-1 to 3 and eliciting favourable answers from the mouth of the PW-1 to 3 or by entering in to witness box and

leading defence evidence and producing cogent documentary evidence to substantiate their stand. It is settled principles of law that bare pleadings of the parties without any oral or documentary evidence to substantiate the facts stated in pleading cannot be considered. At this stage it is apt to refer to the decision rendered by the Hon'ble Supreme Court of India in the matter of **Vidhyadhar V/s. Mankikrao and another** reported in **AIR 1999 SC 1441**. In the said decision, the Hon'ble Supreme Court of India has observed in para no.16 that:

“Where a party to the suit does not appear into the witness box and states his own case on oath and does not offer himself to be cross-examined by the other side, a presumption would arise that the case set up by him is not correct.”

15. The said decision is aptly applicable to the present case on hand. In the present case at hand also, the defendants No.4(a) to (d) have not chosen to enter in to witness box and state their case on oath and they do not offer themselves for cross examination. Hence, the contention taken by the defendants No.4(a) to (d) cannot be acceptable and the defendants No.4(a) to (d) have failed to prove that the suit schedule property is the self acquired property of husband of defendant No.4(a) and father of the defendant No.4(b) to (d) i.e. deceased defendant No.4, as the same was granted in his individual name. On the other hand the plaintiff by oral and

documentary evidence has established that during the joint cultivation of suit schedule property by the defendant No.1, 4 to 7, the suit schedule property was granted on behalf of the entire joint family in the name of the defendant No.4 who being the Kartha of the joint family on the consent of all the joint family members, as such, the suit schedule property is their joint family property. Thus, the oral evidence of the plaintiff corroborated with documentary evidence furnished by him make it clear that the plaintiff and defendants are joint family members and suit schedule property is the joint family property of the plaintiff and defendants and there was no partition in the joint family in respect of the suit schedule property. Hence, without discussing much on this, **Issue No.1 and 2 are answered in the 'Affirmative' and Issue No.3 is answered in the 'Negative.'**

16. Issue No.4: The plaintiff has filed the above suit against the defendants for the relief of Partition and Separate possession of his legitimate share in the suit schedule property. Since the plaintiff has proved that himself and the defendants constitute joint family and the suit schedule property is their joint family property and there was no partition in respect of the suit schedule property, the plaintiff is entitled for the relief of Partition and Separate possession of his legitimate share in the suit schedule property as sought for in the plaint.

17. Now the next question that merits the consideration of this Court is the quantum of share to be allotted to the plaintiff. The plaintiff has sought for his 1/3rd share in the share allotted to his father Ramachandra who is deceased defendant No.1 herein contending that himself and defendants are joint family members and the suit schedule property is their joint family property and during the joint cultivation of suit schedule property by the defendant No.1, 4 to 7, the suit schedule property was granted on behalf of the entire joint family in the name of the defendant No.4 who being the Kartha of the joint family vide LND 1/17.04.1974 on the consent of all the joint family members and since the date of grant, himself and defendants are in joint possession and enjoyment and jointly cultivating the suit schedule property. It is pertinent to mention here that on careful perusal of plaint averments and oral and documentary evidence lead by the PW-1, it reveals that the suit schedule property is the joint family property of father of the defendant No.1, 4 to 7 and grand father of the plaintiff by name Ramaswamy and he died leaving the defendant No.1, 4 to 7 as his legal heirs. Since the suit schedule property is joint family property, the defendant No.1, 4 to 7 are entitled for equal shares in the suit schedule property. Hence, the defendant No.1, 4 to 7 are entitled for 1/5th each share in the suit schedule property.

Further, during pendency of above suit, the defendant No.1, 4 and 7 have died leaving their legal heirs i.e., the defendant No.1 died leaving plaintiff and defendant No.2 and 3 as his legal heirs, the defendant No.4 died leaving the defendant No.4(a) to (d) as his legal heirs and the defendant No.7 died leaving the defendant No.7(a) and (b) as his legal heirs. Hence, the plaintiff and defendant No.2 and 3 are jointly entitled for share of their father deceased defendant No.1, the defendant No.4(a) to (d) are jointly entitled for share of deceased defendant No.4 and the defendant No.7(a) and (b) are jointly entitled for share of deceased defendant No.7. Thus, the plaintiff, defendant No. 2 and 3 are entitled for $1/15^{\text{th}}$ each share in the suit schedule property and defendant No.4(a) to (d) are jointly entitled for $3/15^{\text{th}}$ share, defendant No.5 and 6 are entitled for $3/15^{\text{th}}$ each share and defendant No.7(a) and (b) are jointly entitled for $3/15^{\text{th}}$ share in the suit schedule property. **Hence, Issue No.4 is answered partly in the 'Affirmative'.**

18. **Issue No.5:** In view of the discussions made under Issues No.1 to 4 and the reasons stated therein, I proceed to pass the following:

ORDER

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

The plaintiff, defendant No.2 and 3 are entitled for 1/15th each share in the suit schedule property.

The defendant No.5 and 6 are entitled for 3/15th each share in the suit schedule property.

The defendant No.4(a) to (d) are jointly entitled for 3/15th share and defendant No.7(a) and (b) are jointly entitled for 3/15th share in the suit schedule property.

Having regard to the facts and circumstances of the case, parties to bear their own costs.

Draw preliminary decree accordingly.

This court deems it fit that an opportunity should be granted to the parties to devise a method as to how best the suit property can be partitioned by metes and bounds after consulting with each other. For this purpose, time is granted to the parties to explore the possibility of partitioning the property by metes and bounds effectively and to apprise the same to the court. Hence after preparation of preliminary decree office is

directed to put up record for suggesting modes of partition of suit property on 31.07.2026.

(Dictated to the Stenographer directly on computer, corrected by me, signed and then pronounced in the open Court on this the 1st Day of April 2026)

(**SANTHOSHA KOTARI**)
C/c I Addl. Civil Judge & J.M.F.C.,
H.D.Kote.

:ANNEXURE:

List of witnesses examined for plaintiff:

PW-1 : Sri. Prabhakar R
PW-2 : Sri. Muniyandi S
PW-3 : Sri. Chinnaswamy

List of witnesses examined for defendants:

- NIL -

List of documents exhibited for plaintiff:

Ex.P1 and 2 : RTC extracts in respect of the suit schedule property,
Ex.P3 : Mutation register extract,

List of documents exhibited for the defendants:

- NIL -

(**SANTHOSHA KOTARI**)
C/c I Addl. Civil Judge & J.M.F.C.,
H.D.Kote.