

KAMS210023072013



**IN THE COURT OF THE I ADDL. 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 24th day of March, 2026

ORIGINAL SUIT NO.424/2013

PLAINTIFF

- Sri.Gurubasavaiah
S/o.Late.Basavaiah @ Kuntaiah
Aged about 75 years,
R/at Lakshmipura Village,
Kasaba Hobli, H.D.Kote Taluk,
Since dead by his legal heirs
- 1(a) Smt.Javajamma
W/o.Late.Gurubasavaiah
Aged about 75 years,
- 1(b) Smt.Shivamma
D/o.Late.Gurubasavaiah
Aged about 49 years,
Residing at Sogahalli Village,
Antharasanthe Hobli,
H.D.Kote Taluk.
- 1(c) Sri.Padmaraju
S/o.Late.Gurubasavaiah
Aged about 47 years,
Smt.Yashodha
- 1(d) D/o.Late.Gurubasavaiah

Aged about 45 years
R/at Haliyuru Village,
Kandalike Hobli, Saraguru Taluk.

1(e) Sri.Yogesha
S/o.Late.Gurubasavaiah
Aged about 42 years,

Sri.Basavaraju
1(f) S/o.Late.Gurubasavaiah
Aged about 38 years,

Smt.Sowmya
1(g) D/o.Late.Gurubasavaiah
Aged about 28 years,

Plaintiff No.1(a), 1(c), 1(e),1(f) and 1(g) ag) are R/a
R/at Lakshmipura Village,
Antharasanthe Hobli,
H.D.Kote Taluk.

(By Sri.P.Nagendra, Advocate)

V/S

DEFENDANTS

Sri.Basavaiah @ Rachaiah
S/o.Late.Basavaiah @ Kuntaiah
Aged about 77 years,
Since dead by his legal heirs,

1(a) Smt.Muniyamma
W/o. Late. Basavaiah,
Aged about 70 years,

1(b) Basappa
S/o. Late. Basavaiah,
Aged about 50 years,

1(c) Smt.Yashodha
W/o. Madesha,
Aged about 45 years,
All are R/at Jakkahalli Village,
Kasaba Hobli, H.D.Kote Taluk.

(By Sri.C.G.Krishnaiah, Advocate)

Date of Institution	16.12.2013		
Nature of the Suit	PARTITION AND SEPARATE POSSESSION		
Date of Commencement of recording of Evidence	02.01.2018		
Date of Pronouncement of Judgment	24.03.2026		
Total Duration	Year/s 12	Month/s 03	Day/s 08

(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 defendant for the relief of Partition and Separate possession of his legitimate share in the suit schedule property 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 land bearing Sy. No.29 measuring to an extent of 02 acres, situated at Yarahallikaval Village, Kasaba Hobli, H.D.Kote Taluk, Mysore District and bounded on:

East By : Myrada Institution and Land belonged to plaintiff

West By : Land belonged to Kempanna

North By : Canal and Land belonged to
Sannakoosanna
South By : Land belonged to Ningarajaiah

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

According to plaintiff, himself and defendant are children of deceased Basavaiah @ Kuntaiah and Smt.Doddamma and they died intestate leaving the plaintiff and defendant as their legal heirs. The plaintiff and the defendant constitute Hindu Joint family and suit schedule property is their undivided joint family property. Originally suit schedule property was ancestral property of their father deceased Basavaiah @ Kuntaiah and during his lifetime he along with the plaintiff and defendant was in possession and enjoyment of the suit schedule property. After his death the plaintiff and defendant being the sole legal heirs of the deceased Basavaiah @ Kuntaiah, have succeeded the suit schedule property and in joint possession and enjoyment of the suit schedule property. There was no partition in respect of the suit schedule property either during the life time of their father Basavaiah @ Kuntaiah or between the plaintiff and defendant. He has equal share in the suit schedule property. It is further submitted that there was difference of opinion between the plaintiff and defendant about the schedule property and accordingly they were residing separately. However, the defendant had given only 01 acre of land out of total extent of 03 acres of land to the plaintiff and he illegally got changed the Katha in respect of entire 02

acres of land in the suit schedule property out of total extent of 03 acres of land and had not allotted 20 guntas of land in the suit schedule property for which he entitled under law. Despite of repeated demands made by him the defendant has not heeded to his request and refused to give his legitimate share in the suit schedule property. Hence, he constrained to file the present suit against the defendants. It is pertinent to mention here that during pendency of the above suit, the original plaintiff Gurubasavaiah has died and accordingly, his legal heirs plaintiffs No.1(a) to (g) were come on record.

4. After registering the suit, suit summons was issued to the defendant and the defendant has appeared through his Counsel and filed detailed written statement denying the averments made in the plaint. In the written statement it is submitted that the suit filed by the plaintiff is neither maintainable under law nor on facts, as such, same is liable to be dismissed. It is submitted that he is the absolute owner in possession of the land measuring 02 acres in the suit schedule property and the RTC in respect of 01 acre of land stands in the name of plaintiff and he is cultivating the same. The land bearing Sy. No.29 is originally consisted of 06 acres of land and out of said 06 acres, 03 acres of the land were shown in the name of the government and in respect of 01 acre of land the name of the plaintiff was entered in the RTC extract. The defendant has filed the case before the Hon'ble High Court of Karnataka in respect of the suit schedule property and same is pending for adjudication. Originally the

suit schedule property was granted in favor of the defendant by Land Tribunal, H.D.Kote under occupancy right and accordingly he is in possession and enjoyment of the suit schedule property. Further since he was in actual possession of 06 acres of land in Sy. No.29, he has approached the Hon'ble High Court by challenging the order passed by the Land Tribunal, H.D.Kote wherein the Land Tribunal has granted only 03 acres of land out of 06 acres of land. The plaintiff has no manner of right, title whatsoever over the suit schedule property. For all these reasons, he prayed to dismiss the suit with cost. It is pertinent to mention here that during pendency of the above suit, the original defendant Basavaiah has died and accordingly, his legal heirs defendant No.1(a) to (c) were brought on record.

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

ISSUES

1. *Whether the plaintiff proves that the suit schedule property is the ancestral and joint family property of the plaintiff and defendant as alleged?*
2. *Whether the plaintiff proves that he is entitled for a share in the suit schedule property, if so, to what extent?*
3. *Whether the defendant proves that the land in Sy. No.29 measuring 06 acres is granted to the defendant a Genidara as alleged?*
4. *Whether the plaintiff is entitled for the relief of partition and separate possession as sought for?*

5. *What order or decree?*

6. In order to prove his case, the original plaintiff examined himself as PW-1 and produced as many as 6 documents and they are marked as Ex.P1 to Ex.P6. There is no oral or documentary evidence on behalf of the defendant.

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

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

Issue No.1: In the Affirmative,
Issue No.2: Partly 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

9. Issue No.1 and 3: These two 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.

10. The plaintiff in order to prove that himself and defendant 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 original plaintiff examined himself as PW-1 and he filed affidavit in lieu of his examination in chief by deposing that

himself and defendant are children of deceased Basavaiah @ Kuntaiah and Smt.Doddamma and they died intestate leaving the plaintiff and defendant as their legal heirs. Himself and the defendant constitute Hindu Joint family and suit schedule property is their undivided joint family property. Originally suit schedule property was ancestral property of their father deceased Basavaiah @ Kuntaiah and during his lifetime the said Basavaiah @Kuntaiah along with him and defendant was in possession and enjoyment of the suit schedule property. After his death himself and defendant being the sole legal heirs of the deceased Basavaiah @ Kuntaiah, have succeeded the suit schedule property and in joint possession and enjoyment of the suit schedule property. There was no partition in respect of the suit schedule property either during the life time of their father Basavaiah @ Kuntaiah or between himself and the defendant. He has legitimate share in the suit schedule property i.e., he is entitled for 20 guntas of land in the suit schedule property. He further deposed that there was difference of opinion between the plaintiff and defendant about the suit schedule property and accordingly they were residing separately, however the defendant had given only 01 acre of land out of total extent of 03 acres of land to the plaintiff and he illegally got changed the Katha in respect of entire 02 acres of land in the suit schedule property out of total extent of 03 acres of land and had not allotted 20 guntas of land in the suit schedule property for which he is entitled under law. Despite

of repeated demands made by him, the defendant has not heeded to his request and refused to give his legitimate share in the suit schedule property. The PW-1 in support of his oral evidence has also produced as many as 6 documents and they are marked as Ex.P1 to 6. Ex.P1 and 2 are certified copies of hand written RTC extracts. Ex.P3 is the mutation register extract in respect of 3 acres of land in Sy. No.29. Ex.P4 to 6 are the RTC extracts in respect of 3 acres of land in Sy. No.29, for the period 2008-09, 2012-13 and 2013-14, wherein the Katha got changed in the name of the plaintiff in respect of 01 acre of land and Katha got changed in the name of the defendant in respect of 02 acres of land in Sy. No.29 the suit schedule property.

11. 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 Basavaiah @ Kuntaiah. It discloses that plaintiff and the defendant are children of said Basavaiah @Kuntaiah and Smt.Doddamma. It further discloses that the plaintiff and defendant are Class I legal heirs of deceased Basavaiah @Kuntaiah and they are joint family members. Further, the defendant has not denied the said genealogy/family tree narrated by the plaintiff in his pleading, rather he clearly admitted the same in his written statement. Thus, plaintiff has proved that himself and defendant constitute Hindu undivided joint family.

12. Further the plaintiff/PW-1 in order to prove the suit schedule property is their joint family property has produced certified copy of the hand written RTC extract at Ex.P1 for the period 1975-76 in respect of 03 acres of land in Survey No.29. On perusal of said document it reveals that the land bearing Survey No.29 measuring 03 acres (which includes the suit schedule property) was originally standing in the name of father of the plaintiff and defendant by name Basavaiah S/o. Kunta @ Kuntaveerashetty. Thus, the said hand written RTC extract makes it clear that after said Basavaiah acquiring the said land measuring 03 acres, the Katha of the said land got changed in his name and he along with his family members i.e., the plaintiff and defendant were in joint possession and enjoyment of the suit schedule property till his death. Thus after the death of said Basavaiah the plaintiff and defendant being the legal heirs of said deceased Basavaiah have jointly succeeded the the said land bearing Survey No. 29 measuring 03 acres (which includes the suit schedule property), as such, the plaintiff along with defendant has legitimate share in the said land measuring 03 acres. Further, though the defendant has cross examined the PW-1, nothing worth materials has been elicited from the mouth of the PW-1. However, it is contention of the defendant that he is the absolute owner in possession of the suit schedule property and the RTC in respect of 01 acre of land stands in the name of plaintiff and he is cultivating the same. The land bearing Sy. No.29 is originally consisted of 06 acres of land and out of said 06

acres, 03 acres of the land were shown in the name of the government and in respect of 01 acre of land the name of the plaintiff was entered in the RTC extract. He has filed the case before the Hon'ble High Court of Karnataka in respect of the suit schedule property and same is pending for adjudication. Originally the suit schedule property was granted in his favor by the Land Tribunal, H.D.Kote under occupancy right and accordingly he is in possession and enjoyment of the suit schedule property. Further since he was in actual possession of entire 06 acres of land in Sy. No.29 he has approached the Hon'ble High Court by challenging the order passed by the Land Tribunal, H.D.Kote wherein the Land Tribunal has granted only 03 acres of land out of 06 acres of land. The plaintiff has no manner of right, title whatsoever over the suit schedule property. Though the defendant has taken the said contention in his written statement, he has not taken any pain to prove the said fact by entering in to witness box and leading defence evidence and producing cogent documentary evidence to substantiate his 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.”

13. The said decision is aptly applicable to the case on hand. In the present case at hand also, the defendant has not chosen to enter in to witness box and state his case on oath and he does not offer himself for cross examination. Hence, the contention taken by the defendant cannot be acceptable and the defendant has failed to prove that he has acquired the suit schedule property through occupancy right granted/ declared by the Land Tribunal H.D.Kote and by virtue of said order, he become the absolute owner in possession of the suit schedule property. Thus, the oral evidence of the plaintiff corroborated with documentary evidence furnished by him make it clear that the plaintiff and defendant are joint family members and suit schedule property is the joint family property of the plaintiff and defendant 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 is answered in the ‘Affirmative’ and Issue No.3 is answered in the ‘Negative.’**

14. **Issue No.2 and 4:** These two 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.

15. The plaintiff has filed the above suit against the defendant for the relief of Partition and Separate possession of his legitimate share in the suit schedule property i.e. 20 guntas of land in the suit schedule property. Since the plaintiff has proved that himself and the defendant 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.

16. 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 20 guntas of land in the suit schedule property contending that there was difference of opinion between himself and defendant about the suit schedule property and accordingly they were residing separately, however the defendant had given only 01 acre of land to him out of total extent of 03 acres of land and he illegally got changed the Katha in respect of entire 02 acres of land in the suit schedule property out of total extent of 03 acres of land and had not allotted 20 guntas of land in the suit schedule property for which he is entitled under law. Though the defendant has denied the said contention taken by the plaintiff by filing his written statement and taken contention that he is the absolute owner in possession of the suit schedule property and the RTC in respect of 01 acre of land stands in the name of plaintiff and he is cultivating the

same and he has no manner of right, title whatsoever over the suit schedule property, however, he has not proved the same by entering into witness box and leading evidence and producing relevant documents. On perusal of pleadings of the parties and oral and documentary evidence lead by the PW-1 it reveals that land bearing Survey No.29 measuring 03 acres, situated at Yarahallikaval Village, Kasaba Hobli, H.D.Kote Taluk (which includes the suit schedule property) was originally belonged to father of the the plaintiff and defendant by name deceased Basavaiah @Kuntaiah. After his death, the plaintiff and defendant have inherited the suit schedule property as they being Class -I legal heirs of the deceased Basavaiah @Kuntaiah and they have equal share in said land bearing Survey No.29 measuring 03 acres i.e., they have $\frac{1}{2}$ share each in entire 03 acres of land. Since, the original plaintiff was given with only 01 acre of land in the said land bearing Survey No.29 measuring 03 acres, he is entitled for 20 guntas of land in the suit schedule property and accordingly, the plaintiff No.1(a) to (g) being the legal heirs of deceased plaintiff are jointly entitled for 20 guntas of land in th suit schedule property. **Hence, Issue No. 2 and 4 are answered 'Partly in the Affirmative'.**

17. **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 No.1(a) to 1(g) are jointly entitled for 20 guntas of land 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 **24th day of March 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.Gurubasavaiah

List of witnesses examined for defendant:

-Nil-

List of documents exhibited for plaintiff:

Ex.P1 & 2 Handwritten RTC extracts

Ex.P3 Mutation register extract

Ex.P4 to 6 Computerized RTC extracts

List of documents exhibited for the defendant:

-Nil-

(SANTHOSHA KOTARI)

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