

KAMS300000502022



**IN THE COURT OF I ADDITIONAL SENIOR CIVIL JUDGE  
AND JMFC, HUNSUR**

Dated this the 1<sup>st</sup> day of June, 2026

**:: PRESENT ::**

Smt **Bhagyamma**, B.Com., LL.B.,  
I Addl. Senior Civil Judge & JMFC,  
Hunsur

**O.S./3/2022**

**Plaintiff :**

Gurumallappa,  
S/o late Doddaningappa,  
Aged about 65 years,  
R/at Uyigowdanahalli Village,  
Kasaba Hobli,  
Hunsur Taluk,  
Mysuru District.

**(By Sri VMS, Adv.)**

V/s

**Defendants :**

1. Kamalamma,  
W/o Somanna,  
D/o Mallikarjuna,  
Aged about 55 years,  
R/at Kuluvige Village,  
Hanagodu Hobli,  
Hunsur Taluk.
- 2) Jagadambha,  
W/o Mahadevappa,  
D/o Mallikarjuna,  
Aged about 50 years,  
R/at Yamagumba Village,  
Hanagodu Hobli,  
Hunsur Taluk.

- 3) Latha,  
W/o Shivashekara,  
D/o Mallikarjuna,  
Aged about 45 years,  
R/at Naralapura Village,  
Periyapatna Taluk.
- 4) Savithramma,  
W/o Sundrappa,  
D/o Mallikarjuna,  
Aged about 40 years,  
R/at Gramadevathepura Village,  
Malavalli Taluk,  
Mandya District.
- 5) Manjula,  
D/o Mallikarjuna,  
Aged about 35 years,  
R/at Handanahalli Village,  
Bilikere Hobli,  
Hunsur Taluk.
- 6) Girisha,  
S/o late Chandrappa,  
Aged about 45 years,  
R/at Uyigowdanahalli Village,  
Kasaba Hobli,  
Hunsur Taluk,  
Mysuru District.
- 7) Shobha, W/o Girish,  
Aged about 45 years,  
R/at No. Eshwara Nagara,  
K.R. Nagar Town,  
Mysuru District.

**(By Sri BAS, Adv.  
For Def.No.1, 4 & 5 and  
Def.No.2, 3, 6, 7 – Exparte)**

Date of Institution of Suit : 05.01.2022

Nature of Suit : Partition & Possession

Date of commencement of  
Recording of evidence : 16.04.2024

Date of which judgment  
pronounced : 01.06.2026

Total Duration : **Years Months Days**  
04 04 26

**(BHAGYAMMA)**  
**I Addl. Senior Civil Judge & JMFC.,**  
**Hunsur.**

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

The plaintiffs has filed this suit against the defendants seeking relief of partition and separate possession of 1/3rd share in respect of suit schedule properties and such other reliefs.

**2. Description of suit schedule properties:**

**Item No.1:-** Agricultural Land property bearing Sy.No.70/5 measuring 3.32 acres situated at Uyigowdanahalli village, Kasaba Hobli, Hunsur Taluk, Mysuru district of its boundaries bounded by;

East	-	Road
West	-	Lands of Lokesh
North	-	Lands of Puttaswamappa
South	-	Lands of Shivalingappa

**Item No.2:-** Agricultural Land property bearing Sy.No.34/3 measuring 1.18 acres situated at Uyigowdanahalli village, Kasaba Hobli, Hunsur Taluk, Mysuru district of its boundaries bounded by;

East	-	Lands of Puttaswamappa
West	-	Lands of Doddasannappa
North	-	Lands of Kivudaiah
South	-	Lands of Maranahalli Channabasappa

**Item No.3:-** Agricultural Land property bearing Sy.No.25 measuring 2.00 acres situated at Uyigowdanahalli village, Kasaba Hobli, Hunsur Taluk, Mysuru district of its boundaries bounded by;

East	-	Road
West	-	Lands of Beejiganahalli Keshava Rao
North	-	Lands of Annaiahppa

South - Lands of Doddaningappa

**Item No.4:-** Agricultural Land property bearing Sy.No.189 measuring 4.05 acres situated at Uyigowdanahalli village, Kasaba Hobli, Hunsur Taluk, Mysuru district of its boundaries bounded by;

East - Lands of Nanjamani  
 West - Lands of Keshava Rao  
 North - Lands of Channabasappa  
 South - Kere

**Item No.5:-** Agricultural Land property bearing Sy.No.295/2 measuring 0.21 guntas situated at Uddurunala village, Kasaba Hobli, Hunsur Taluk, Mysuru district of its boundaries bounded by;

East - Lands of Devappa  
 West - Lands of Devappa  
 North - Lands of Maribasappa  
 South - Lands of Kalegowda

**Item No.6:-** Agricultural Land property bearing Sy.No.303/2 measuring 0.15 guntas situated at Uddurunala village, Kasaba Hobli, Hunsur Taluk, Mysuru district of its boundaries bounded by;

East - Lands of Veerabhadrappa  
 West - Canal  
 North - Lands of Puttaswamappa  
 South - Lands of Doddaiah

**3. The factual matrix of the plaintiffs case is as under:**

It is the case of the plaintiff that, the plaintiff's father by name Doddaningappa got married to one Ningamma, out of their wedlock three sons by name Mallikarjun, Chandrappa and

Gurumallappa were begotten. It is pleaded that, the brothers of the plaintiff name Mallikarjun had got married Nanjamani and out of the said wed lock, the defendant Nos. 1 to 5 were begotten. That the plaintiff's 2<sup>nd</sup> brother Chandrappa got married to one Rajamani and out of the said wedlock, the 6<sup>th</sup> defendant Girish was begotten. Further it is pleaded that the plaintiff schedule properties are the ancestral properties, which cannot be disputed by the plaintiff and defendants. The plaintiff is illiterate and not having knowledge about the entries in the RTC. Hence, the defendants had promised all along that, the khatha is standing in their ancestors and hence, the property will be demarcated by metes and bounds of 1/3<sup>rd</sup> share of the plaintiff. Based on the said promise the plaintiff kept quite all along. The plaintiff in order to obtain his legitimate 1/3<sup>rd</sup> share over the plaintiff schedule property requested the defendants during the 1<sup>st</sup> week of July 2021 for demarcation of the schedule properties. All of a sudden the legal heirs of the plaintiff's brothers, refused for demarcation of the schedule properties and threatened the plaintiff that, they have obtained the change of khatha behind the back of plaintiff before the Revenue Authority at Hunsur. Hence, the plaintiff cannot claim any share over the schedule properties. The plaintiff without wasting any point of time, with the help of elder members of Uyigowdanahalli village, Hunsur taluk got obtained the RTC extract in respect of Sy. No.70/5 measuring 3 acre 32 guntas and Sy. No. 34/3 measuring 1 acre 18 guntas which has been specifically described as Item No.1 and 2 of the plaintiff schedule property. The property situated at Uddur and Uddur Nala of Sy. No. 25-2 acres, Sy. No.189-4 acre 05 guntas, Sy. No. 295/2 - 0- 21 guntas and Sy. No. 303/2 measuring 1 acre 15 guntas. Though they have obtained khatha behind the back of

the plaintiff, the plaintiff is having 1/3rd share over the plaint schedule property. Hence, in order to obtain the legitimate 1/3rd share, the plaintiff again requested the defendant during the 1<sup>st</sup> week of December 2021 to demarcate his share. Unfortunately the defendants refused to demarcate the plaint schedule properties. Then without any alternative the plaintiff called out a Panchayath at Uyigowdanahalli village, Kasaba Hobli, Hunsur Taluk on 15.12.2021, unfortunately the defendants refused to appear before the said Panchayath. Hence without any alternative the plaintiff has approached the court for relief of partition and separate possession. Hence this suit is filed.

4. After registering the suit, the summons issued to the defendants. In pursuance of summons, the defendants-1, 4 & 5 appeared through their counsel and the defendant-1 has filed her written statement. The substance of the written statement is that defendant No.1 denies the 1/3rd share of plaintiff in all the suit schedule properties and contends that some items are self-acquired properties of different family members. It is specifically contended that there had already been an earlier partition among the family members and the properties were separately allotted in the year 1980. She further contended that after the earlier partition, each sharer has been in separate possession and enjoyment of his or her respective properties, paying taxes independently and exercising exclusive ownership rights. Accordingly, the revenue records and RTC extracts are relied upon to support this contention. The written statement also raises the plea of non-joinder of necessary parties. The defendant No.1 stated that item no.3 has been divisioned in to 3 parts as Sy.No.25/1, 25/2 and 25/3, of it 28 guntas at Sy.No.25/1 is in the

name of one Devarajappa, another 28 guntas at Sy.No.25/2 is in the names of 5 persons viz., Siddamma, Basavarajappa, Chandrappa, Shivappa and Vijaya and another 28 guntas at Sy.No.25/3 is in the name of Devarajappa, who are not made parties in the suit. Similarly, item no.1 and 2 are in the name of Shobha W/o Girish as its owner, who is not impleaded in this suit. Therefore, the suit is bad for non-joinder of necessary parties. It is further contended that some of the suit schedule properties were alienated through registered sale deeds long prior to filing of the suit and therefore those properties are no longer available for partition. The properties are not wholly joint family properties, there was already a prior partition, some items are self-acquired properties, several properties were validly sold and the suit suffers from non-joinder of necessary parties. On these grounds, the defendant No.1 prays for dismissal of the suit.

5. On the basis of above pleadings and documents produced by the plaintiff and defendants, this court has framed the following issues;

### **ISSUES**

- 1.** Whether the plaintiff proves that the suit schedule properties are ancestral and joint family properties of plaintiff and defendants and available for partition?
- 2.** Whether the defendant No.1 proves that suit is bad for non joinder of necessary parties as contended in para No.6 and 7 of her written statement?
- 3.** Whether the plaintiff is entitled for the relief of partition and separate possession of his 1/3rd share in the suit schedule properties?

**4. What order or decree?**

6. In order to prove the case, the plaintiff got examined as PW.1 and got marked 12 documents at Ex.P1 to Ex.P12. On the other hand the defendant No.1 got examined as DW.1.

7. Heard the arguments on both side and perused the available records, documents and evidence of the parties.

8. My findings to the aforesaid issues are as below:

Issue No.1 : In the Affirmative

Issue No.2 : In the Negative

Issue No.3 : In the Affirmative

Issue No.4 : As per final order,  
for the following;

**REASONS**

**9. ISSUE NO.1:** This is the specific suit filed by the plaintiff against the defendants seeking the relief of partition and separate possession of his share in the suit schedule property by metes and bounds. Whereas, the defendant No.1 denied the claim by contending about the earlier partition and the suit is bad for non joinder of all the parties, so prayed to dismiss the suit of plaintiff.

10. The plaintiff got examined as PW.1 and deposed that one Doddaningappa was the propositus of the family and had three sons namely Mallikarjun, Chandrappa and the plaintiff Gurumallappa. According to him, the suit schedule properties are ancestral joint family properties inherited from their father and the parties have continued as members of the undivided family. In support of his contention, PW.1

has produced RTC extracts and revenue records marked at Ex.P1 to Ex.P12 showing the existence of the suit schedule properties and the names of family members in the revenue entries. The evidence of PW.1 further discloses that no partition had taken place among the three branches and despite repeated demands made by the plaintiff, the defendants failed to effect partition. The genealogy pleaded in the plaint has not been seriously disputed by the defendants. Thus, the relationship between the parties stands admitted.

11. On the other hand, defendant No.1 examined herself as DW.1 and contended that there was an earlier partition in the year 1980 and that some of the properties are self-acquired properties of different members. However, except making such assertions in the written statement and oral evidence, DW.1 has not produced any registered partition deed, mutation records based on partition, palupatti, or any independent documentary evidence establishing the alleged partition. Mere entries in RTCs do not by themselves prove a lawful partition. Whereas the defendant-1 admitted the relationship between the parties and the fact that the properties originally belonged to the family. The burden of proving prior partition was entirely upon the defendants and the same has not been discharged by cogent evidence.

12. In order to prove his version even though the defendant no.1 has examined before the court, she has not tendered for cross examination. In such being the case. I would like to refer the decision reported in **AIR 1999 SC**

**1441, in between Vidhyadhar V/s Manik Rao.**

Evidence Act, Sec.114 – Adverse inference

Wherein their lordship held that-

Party to suit not entering the witness box - Give rise to inference adverse against him, where the party to the suit does not appear into the witness box and stated his own case on oath and does not offer himself to the cross examine by the other side, a presumption would arise that the case set up by him is not correct.

The principles laid down in the above decision rightly applicable to the present case on hand. As Dw1 has not been turned for cross-examination, her evidence has been discarded. So there is no importance her evidence as she tendered for cross-examination.

13. The RTC extracts produced by the plaintiff disclose that the suit schedule properties stand in the names of members of the family and there is no convincing material to show that the properties ceased to be joint family properties by virtue of a prior partition. Though the defendants contend that certain items have been alienated, no registered sale deeds are produced to establish complete extinguishment of the plaintiff's share. In the absence of satisfactory proof of prior partition and exclusive title, the presumption of jointness among the members of a Hindu family continues. Therefore, the plaintiff has successfully established that the suit schedule properties are ancestral/joint family properties available for partition to the extent of the interest subsisting therein. **Accordingly, Issue No.1 is answered in the Affirmative.**

**14. Issue No.2:**

The defendant No.1 has specifically contended that item No.3 has been subdivided into Sy.No.25/1, 25/2 and 25/3 and that certain portions stand in the names of Devarajappa, Siddamma, Basavarajappa, Chandrappa, Shivappa and Vijaya. It is further contended that item Nos.1 and 2 stand in the name of Shobha, wife of Girish, therefore such persons are necessary parties to the suit.

15. Though the plea of non-joinder has been raised, DW.1 has not produced title deeds, mutation orders, grant certificates, sale deeds or any other documents establishing that those persons have acquired independent rights adverse to the family. Mere existence of their names in revenue records is insufficient to conclude that they are necessary parties. Moreover, in a suit for partition, every coparcener or person claiming through the family can work out his rights in the final decree proceedings. Unless the defendants establish that such persons possess independent and exclusive title which cannot be adjudicated in their absence, the suit cannot be dismissed on the ground of non-joinder.

16. The burden of proving non-joinder of necessary parties rests on the defendants. Except making a bald assertion, no substantive evidence has been placed before the Court to show how effective adjudication is impossible in the absence of those persons. Therefore, defendant No.1 has failed to prove the plea of non-joinder. **Accordingly, Issue No.2 is answered in the Negative.**

**17. Issue No.3:**

While discussing Issue No.1, this Court has held that the plaintiff has established that the parties are descendants of Doddaningappa and that the suit schedule properties are joint family properties. The defendants have failed to prove the alleged prior partition or exclusive ownership. Therefore, considering all the aspects, the court comes to the conclusion that the plaintiff is entitled for the relief of partition and separate possession over the suit schedule properties. Consequently, the plaintiff, being one of the three sons of Doddaningappa, is entitled to claim his legitimate share in the joint family properties. The evidence on record reveals that the plaintiff repeatedly demanded partition and separate possession, but it is the defendants who refused to give the share of plaintiff. The right of a coparcener to seek partition is a continuing right and cannot be denied unless there is proof of an earlier partition or relinquishment. No such evidence is forthcoming in the present case. Hence, the plaintiff is entitled to seek partition and separate possession of his lawful share. Since Doddaningappa had three sons namely Mallikarjun, Chandrappa and Gurumallappa i.e., plaintiff, each branch would be entitled to 1/3rd share in the joint family properties. The defendants represent the branches of Mallikarjun and Chandrappa. Therefore, the plaintiff is entitled to partition and separate possession of his 1/3rd share in the suit schedule properties, subject to adjustment of any alienations, if legally proved, during final decree

proceedings. **Accordingly, Issue No.3 is answered in the Affirmative.**

**18.Issue No.4:** For the reasons and conclusions on the above issues as discussed above, this court proceeds to pass the following:-

### **O R D E R**

The suit of plaintiff is hereby decreed with costs.

Consequently, the plaintiff is entitled to partition and separate possession of his 1/3rd share by metes and bounds through final decree proceedings.

Parties shall bear and work out equities, if any, regarding alienations and the possession during final decree proceedings.

Draw Preliminary Decree accordingly.

In view of directions issued in the case of Kattukandi Eadathil Krishnan & another -vs- Kattukandi Eadathil Valsan & others by the Hon'ble Supreme Court of India in Civil Appeal No.6406-6707/2010 dated 13-06-2022 and Circular No.DJA/1/105 dated 21-10-2022 issued by Hon'ble High Court of Karnataka, when the

preliminary decree is passed in respect of partition suit, the Court has to initiate final decree proceedings as per Order XX Rule 18 of CPC suo-moto.

Hence, Office is directed to register FDP proceedings under Order XX Rule 18 of CPC, case is based on the preliminary decree in this suit and keep a certified copy of preliminary decree of this suit in the said FDP proceedings.

Both parties are directed to appear in FDP case (to be registered) on 20.07.2026 without expecting notice.

(Dictated to the stenographer, directly on computer, typed by him, corrected and then pronounced by me in the open court on this the **1<sup>st</sup> day of June 2026**).

**(BHAGYAMMA)**

I Addl. Senior Civil Judge & JMFC.,  
Hunsur

### **ANNEXURE**

#### **WITNESSES EXAMINED FOR PLAINTIFF :**

PW-1 : Gurumallappa

#### **DOCUMENTS MARKED FOR PLAINTIFF:**

Ex.P1 : G-Tree

Ex.P2 to 7 : RTCs (6 Nos.)

Ex.P8 to 12 : M.R. extract registers (5 Nos.)

**WITNESSES MARKED FOR DEFENDANTS:**

DW1 : Kamalamma

**DOCUMENTS EXAMINED FOR DEFENDANTS:**

NIL

**(BHAGYAMMA)**  
**I Addl. Senior Civil Judge & JMFC.,**  
**Hunsur**