

KAMS310002022014



IN THE COURT OF PRL. CIVIL JUDGE & JMFC
AT HUNSUR.

DATED THIS THE 13th DAY OF JULY, 2026

:PRESENT:

**Smt. AYISHABI.P.MAJID., B.A. L.L.B.,
PRL. CIVIL JUDGE & JMFC.,
HUNSUR.**

O.S.No.367/2014

Plaintiff: Sri.H.K.Ramesha,
S/o Late.Kariyappa,
Aged about 34 years,
Agriculturist, R/at Handanhalli village,
Bilikere Hobli, Hunsur Taluk.

(By.Sri. C.S.S., - Adv.,)

V/S

Defendants: 1.Smt.Chinnamma,
Dead.
2. Sri. H.K.Mahadevappa,
S/o Late. Kariyappa,
Aged about 51 years.
3. Smt.Mani,
W/o H.K.Mahadevappa,
Aged about 45 years.

4. Sri. Raju,
S/o H.K.Mahadevappa,
Aged about 23 years,

Defendant Nos.1 to 4 are R/at
Handanhalli village,
Bilikere Hobli, Hunsur Taluk.

5.Smt.Basammanni,
W/o Rudrappa,
Aged about 53 years,
R/at Harnahalli village,
Hampapura Hobli,
H.D.Kote Taluk.

6.Smt.Shanthamma,
W/o Mahadeva,
Aged about 45 years,
R/at Lalithadri village,
Kasaba Hobli,
Mysore Taluk.

7. Smt.Shobha,
W/o Veerabhadraswamy,
Aged about 38 years
C/o The defendant No.1

8. Smt.Sumithra,
W/o S.Raju,
Major, R/at Door No.802, 'C' Block,
3rd Phase, Near Sangam Circle,
Vijayanagara, Mysore.

9. Sri.H.P.Ramesh,
S/o Late.Puttaramappa,
Major, Agriculturist,

R/at Handanhalli village,
Bilikere Hobli, Hunsur Taluk.

(D1 to 6-By.Sri.K.C.B.,-Adv.,)
(D7-Ex-pare)
(D8-By Sri.M.R.H Adv.,)
(D9-by Sri.B.A.S, Adv.)

Date of Institution of the Suit	03.11.2014		
Nature of Suit	Suit for Partition and Separate Possession		
Date of Recording of Evidence	06.09.2018		
Date of closing of Evidence	08.04.2026		
Date of Judgment Pronounced	13.07.2026		
Total Duration	Year's 11	Month's 08	Day's 10

(Ayishabi.P.Majid.,)
Pri. Civil Judge & JMFC,
Hunsur.

: J U D G M E N T :

The present suit has been instituted by the plaintiff against the defendants for the relief of Partition and Separate Possession claiming 1/5th share in the suit schedule properties by effecting equitable partition by metes and bounds.

2. The brief facts of the plaintiffs case is that, one Late Kariyappa S/o Ramatah Koosappa was the father of the plaintiff, and defendant No.2 and 5 to 7 and husband of the defendant No.1 passed away during the year 2005, leaving the plaintiff and defendant No.2, 5 to 7 as his only legal heirs. The joint family of Late.Kariyappa and his five children possessed both movable and immovable properties. Late.Kariyappa himself had performed the marriage of his and three daughters and they are residing in their marital houses. Upon the death of Late.Kariyappa, the defendant No.1 with the assistance of the defendant No.2, who is the eldest son took up the management of the joint family and the joint family properties. The properties in Sy.No.46/1 and 46/3 have also been acquired out of the joint family funds in the name of the defendant No.1.

3. It is further stated that, the ancestral properties and the properties acquired out of the joint family funds. After the death of Late.Kariyappa, there was mis-understanding in the joint family and as such the plaintiff and his wife are residing separately in a portion of the joint family residence. But there has been no partition by metes and bounds and the family is

continuing to be joint, enjoying suit schedule properties. Since the defendant No.1 and 2 making use of the katha of the joint family properties standing in the name of the defendant No.1, started misusing the joint family properties and the benefits derived thereof. The defendant Nos. 1 and 2 developed hostile attitude towards the plaintiff. The plaintiff is not worldly-wise and making use of his innocence, the defendant No.1 to 4 indulged in creating false and fake documents in the name of the defendant No.8 to defeat the rights of the plaintiff over the joint family properties.

4. It is further stated that, upon coming to know of the illegal acts of the defendant Nos. 1 and 2, the plaintiff demanded them on 7.9.2014 for partitioning the joint family properties and put the plaintiff in separate possession of his share by metes and bounds. The defendant Nos. 1 and 2 did not show any interest in the matter and hence the plaintiff got issued a legal notice dated 13.09.2014 demanding for partition and inspite of the legal notice, the defendants have not obliged and hence the suit. The plaintiff is entitled for 1/5th share in all the joint family properties. The defendant Nos.1 and 2 no right to refuse partition

and any transactions illegally done by the defendant Nos.1 to 4 with the defendant No.8 does not affect the interest of the plaintiff. Hence, constrained to file the suit.

5. In response to the suit summons, defendant No.7 not appeared before the court, hence he was placed exparte. The defendant Nos.1 to 6 and 8 and 9 have appeared before the court through their respective counsel. The defendant No.7 to 9 have not filed written statement.

6. The defendant No.1 to 6 have filed written statement by denying the plaint averments inter-alia contending that, the land in Sy.No.46/2 measuring 4 acres 9 guntas and item No.2 of the suit schedule properties are the ancestral and joint family properties of plaintiff and defendant No.1 to 7. The land in Sy.No.46/1 measuring 1 acre 20 guntas and Sy.No.46/3 measuring 1 acre 21 guntas are the self acquired properties of defendant NO.1 which was purchased by defendant No.1 from her Sthridhana amount. The said properties are the exclusive properties of defendant No.1. The plaintiff and other defendants have no right, title and interest over the said properties. It is

further contended that, the defendant No.1 has purchased the item No.1 and 3 of the suit schedule properties from her own income out of Shthridhana amount and in order to meet the marriage expenses of daughters and to repay the loan amount which was taken for the family benefit, the defendant No.1 has mortgaged the land in Sy.No.46/1 measuring 1 acre 20 guntas in favour of defendant No.8 and the defendant No.1 is paying interest towards the loan amount. Further contended that, the plaintiff and defendant No.1 to 7 are having share in item No.2 and 4 of the suit schedule properties and prays to dismiss the suit in respect of item No.1 and 3 of the suit schedule properties.

7. On the basis of pleadings of the parties, my Predecessor in office has framed the following issues for determination.

ISSUES

1. Whether the plaintiff proves that, the suit properties are undivided, ancestral and joint family properties of himself and defendants and they are in joint possession and enjoyment?

2. Whether the defendant No.1 to 6 prove their contentions at paragraph No.12 of their written statement?
3. Whether the plaintiff is entitled for 1/5th share in the suit schedule properties?
4. What order or decree?

8. After settlement of Issues, in order to prove his case, the plaintiff entered the witness box deposed as P.W.1 and Special Power of Attorney holder got examined as PW.2 and got marked documents at Ex.P.1 to Ex.P.24 and closed his side evidence. On the other hand, the defendant No.2 entered the witness box deposed as D.W.1 and got marked documents at Ex.D.1 and 2 and closed their side evidence.

9. Heard the arguments of learned counsel for the plaintiff and defendants. Perused the documents placed on record.

10. My findings to the above said issues are as under;

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;

: R E A S O N S :

11. **Issue Nos.1 and 2:-** As these two issues are inter linked to each other, in order to avoid repetition of facts, they have taken up together for consideration.

12. The plaintiff has filed the present suit against the defendants for the relief of partition and separate possession claiming his share in the suit schedule properties on the ground that, the suit schedule properties were standing in the name of father, during his life time he was in possession of the suit schedule properties. The defendant Nos.1 without the knowledge of the plaintiff got changed katha into her name. The land in Sy.No.46/1 and 46/3 is acquired by the defendant No.1 out of the joint family funds. There was no partition taken place in the family of the plaintiff and defendants. In spite of several requests the defendants not provided share of the plaintiff. Hence, constrained to file the suit.

13. The plaintiff examined as P.W.1 in his examination-in-chief, he has reiterated the plaint averments. Thereafter the plaintiff has execute Special Power of Attorney in favour of his wife, she examined as PW.2. As per deposition dated 26.02.2024 the Special Power of Attorney was produced at Ex.P1 and the remaining documents are marked as Ex.P2 to 24 however. It is not reflected in the documents however as per deposition the Special Power of Attorney holder is considered as Ex.P1. The documents are given exhibits numbers as Ex.P1 to 3 as such this court proceed to pass judgment by considering the documents as Ex.P1 to 24. The documents marked on his behalf at Ex.P.1 to Ex.P.24. Ex.P1 is the Special Power of Attorney executed by plaintiff in favour of his wife. Ex.P.2 to 4 are the RTC extract, Ex.P.5 and 6 are the certified copies of tax paid receipts, Ex.P7 is the office copy of the legal notice, Ex.P8 is Postal Acknowledgment, Ex.P9 is Postal cover, Ex.P9(a) is the legal notice. Ex.P10 and 11 are the certified copies of the Sale Deed, Ex.P12 is the certified copy of the Mortgage Deed. Ex.P13 is the certified copy of the Sale Deed, Ex.P14 and 15 are the Index of Lands. Ex.P16 is the Record of Rights, Ex.P17 to 22 are

the certified copies of the handwritten RTC extracts, Ex.P23 and 24 are the Camp receipts.

14. In order to prove that, the suit schedule properties are the ancestral and joint family properties, the plaintiff has produced document at Ex.P.1 is the special power of attorney executed by plaintiff in favour of his wife to proceed with the suit. The RTC extract produced at Ex.P2 for the year 2013-2014 in respect of item No.1 of the suit schedule property stands in the name of defendant No.1. The RTC extract produced at Ex.P3 for the year 2013-2014 in respect of item No.2 of the suit schedule property stands in the name of defendant No.1. The RTC extract produced at Ex.P4 for the year 2013-2014 in respect of item No.3 of the suit schedule property stands in the name of defendant No.1. The property receipt produced at Ex.P5 and 6 goes to show that, the item No.4 of the suit schedule properties stands in the name of defendant No.2 and 3. The legal notice produced at Ex.P7 goes to show that, the plaintiff has got issued notice to the defendants seeking partition in the suit schedule properties. Ex.P8 and 9 are the postal acknowledgment and

postal cover for having serve notice to the defendants. Ex.P9(a) is the copy of the legal notice which was returned and not served to defendant No.1.

15. Further the certified copy of the Sale Deed produced at Ex.P.10 goes to show that, on 10.06.2013 the defendant No.1 has purchased the item No.1 i.e., Sy.No.46/1 measuring 1 acre 20 guntas of the suit schedule properties under the registered Sale Deed from one H.B.Basavanna S/o Ramaiah and his minor children. Further the certified copy of the Sale Deed produced at Ex.P11 goes to show that, on 10.06.2013 the defendant No.1 has purchased the item No.3 Sy.No.46/3 measuring 1 acre 21 guntas of the suit schedule properties from Rathnamma W/o Puttaramaiah and her children under the registered Sale Deed. The certified copy of the mortgage deed produced at Ex.P12 goes to show that, the deceased defendant No.1 and defendant No.2 to 4 have mortgaged the item No.3 Sy.No.46/3 measuring 1 acre 21 guntas of the suit schedule properties in favour of defendant No.8 and borrowed Rs.15,00,000/-. The certified copy of the Sale Deed produced at Ex.P13 goes to show that, during pendency of the suit the defendant No.9 has purchased land in

Sy.No.46/2 measuring 2 acres 20 guntas from defendant No.1 on 10.03.2015. Further the index of land produced at Ex.P14 and 15 goes to show that, the land in Sy.No.46/2 measuring 4 acres 11 guntas stands in the name of Ramaiah S/o Basavaiah, Mudukappa, Kariyappa and Basappa. Further the index of land produced at Ex.P16 goes to show that, the land in Sy.No.46/1 and 46/2 stands in the name of Ramaiah S/o Basavaiah. The record of rights produced at Ex.P17 goes to show that, the land in Sy.No.46/1 was initially standing in the name of Ramaiah S/o Basappa. Thereafter got changed in the name of Puttaramaiah S/o Ramaiah.

16. Further the RTC Extract produced at Ex.P18 in respect of Sy.No.46/2 for the year 1980-81 stands in the name of Muddappa S/o Kariyappa. Further the RTC Extract produced at Ex.P19 in respect of Sy.No.46/1 for the year 1990-91 stands in the name of Puttaramaiah S/o Ramaiah. Further the RTC Extract produced at Ex.P20 in respect of Sy.No.46/2 item No.2 for the year 1990-91 stands in the name of Muddappa, Kariyappa and Koosappa. Further the RTC Extract produced at Ex.P21 in

respect of Sy.No.47/1 measuring 6 acres 2 guntas for the year 1995-96 in which 2.01 each stands in the name of Basavanna S/o Chikkaramaiah, Swamann S/o Chikkaramaiah, Basamma D/o Chikkaramaiah. Further the RTC Extract produced at Ex.P22 in respect of Sy.No.46/1 measuring 3 acres 4 guntas for the year 1995-96 in which 2.01 each stands in the name of Puttarmaiah S/o Ramaiah. The Receipt produced at Ex.P23 and 24 goes to show that, the plaintiff had paid Rs.5,000/- and Rs.55,000/- on 30.06.2014 to the bank.

17. The point for consideration before this Court is that, whether the plaintiff is able to prove that the suit schedule properties are ancestral and joint family properties. The concept of ancestral property and joint family property is well defined in the decision reported in;

2009 (2) KCCR 1206 (DB) (Sri.K.Madhava Raja Nayak V/S Sri.K.Sridhara Nayak and Others) stating that what is coparcenary property, separate property and ancestral property is mentioned.

The term ancestral property has a special meaning in Hindu Law. That means only such property is inherited by a male from father, father's father and father's father's father and such inheritor's son, son's son, and son's son's son get an interest in it by birth. Hence unless there is a nucleolus of ancestral property with the aid of which the acquisitions are made, the acquisitions can not be included within the concept of coparcenary property available for partition between the members of the joint family, coparcenary property is the property held by a coparcenary absolutely and free of all claims from rest of the coparceners which is known as separate of self acquired property. Separate property of a person is property in respect of which other coparcenars can claim no right and on the death of such coparcener, the same is succeeded to not by survivorship but by inheritance, either testamentary or by intestate succession.

18. I have gone through **Mulla's Principles of Hindu Law (15) Edition), at page No.289**, it is stated that "If A inherits property, whether movable or immovable, from his

father, or father's father or father's father's father, it is ancestral property as regards to his male issue. If A has no son or son's son, or son's son's son in existence at the time when he inherits the property, he holds the property as absolute owner thereof and he can deal with it as he pleases..... A person inheriting property from his three immediate paternal ancestors holds it, and must hold it, in coparcenary with his sons, sons' sons' and son's son's son's but as regards to other relations he holds it and is entitled to hold it, as his absolute property.

19. As stated supra, the RTC Extracts produced on record goes to show that, the suit schedule properties stands in the name of defendant No.1 and as per Ex.P2 and 4 goes to show that, the item No.1 and 3 Sy.No.46/1, 46/3 of the suit schedule properties purchased by deceased defendant No.1. Whereas the plaintiff claims that, the item No.1 and 3 are purchased out of the joint family income. The RTC extract produced at Ex.P3 in respect of item No.2 of the suit schedule property stands in the name of deceased defendant No.1. The plaintiff has not produced any documents before the court to show that, the suit

schedule properties purchased by defendant No.1 out of joint family income.

20. It is the contention of the defendants that, the suit schedule Sy.No.46/1 and 46/3 are the self acquired properties of the defendant No.1 and the same is purchased by her out of Sthridhana income as such the plaintiff is not entitled for any share in the item No.1 and 3 of the suit schedule properties. In order to prove their contention, the defendant No.2 entered into witness box deposed as DW.1 and got marked the two documents at Ex.D1 and 2. Ex.D1 is the certified copy of the Aadhara patra, Ex.D2 is the copy of legal notice.

21. It is pertinent to note that, the defendants have denied the nature of the properties. Ex.D1 is the mortgage deed wherein it goes to show that, on 06.09.2014 the defendant No.1 to 4 have mortgaged the land in Sy.No.46/3 measuring 1 acre 21 guntas in favor of defendant No.8 and obtained Rs.15,00,000/- loan from the defendant No.8. Further the noticed produced at Ex.D2 goes to show that, the defendant No.8 got issued notice to defendant No.1 and 2 calling upon

them to pay the loan amount of Rs.15,00,000/- as per mortgage deed. On perusal of the contents of Ex.D1, it goes to show that, the land in Sy.No.46/3 measuring 1 acre 21 guntas was mortgaged in favour of defendant No.8 for a period of 3 years and the defendant No.1 to 4 have obtained Rs.15,00,000/- from the defendant No.8.

22. The learned counsel for the plaintiff vehemently argued that, the plaintiff is not signatory to the Ex.D1 and without consent and knowledge of plaintiff the defendant No.1 to 4 have obtained loan for their personal use. It is further argued that, the suit schedule properties are ancestral and joint family properties of plaintiff and defendants. The defendant No.1 has purchased the land in Sy.No.46/1 measuring 1 acre 20 guntas and Sy.No.46/3 measuring 1 acre 21 guntas out of joint family fund as such the properties becomes the joint family properties of plaintiff and defendants and the plaintiff is having share in the suit schedule properties. The plaintiff when demanded share, the defendants are refused to provide his share in the suit schedule properties. Hence prays to decree the suit. On the other hand, the learned counsel for the defendants have filed Written

argument and it is stated that, the item No.1 and 3 are the self acquired properties of defendant No.1. The plaintiff is not having any share in the suit schedule properties item No.1 and 3 however the plaintiff and other defendants are having share in the item No.2 and 4 of the suit schedule properties. Hence, prays to dismiss the suit with cost.

23. It is pertinent to note that, during the pendency of the suit, the defendant No.1 passed away and plaintiff and defendant No.2 to 7 are the legal heirs of defendant No.1. As stated supra, no documents are produced by the plaintiff to show that, the suit schedule properties purchased by defendant No.1 out of joint family income. However in view of death of defendant No.1 the plaintiff and defendant No.2, 5 to 7 are entitled for share in the property of defendant No.1. The Sale Deed produced at Ex.D10 and 11 goes to show that, the deceased defendant No.1 has purchased the landed properties. Hence the item No.1 and 3 are self acquired properties of deceased defendant No.1. After demise of the defendant No.1 the plaintiff and defendant No.2, 5 to 7 are succeeded to the property left by defendant

No.1, and it become joint family property of plaintiff and defendant No.1 to 7.

24. During the course of cross-examination of PW.2 she has admitted that, the item No.1 and 3 are purchased by defendant No.1 under the registered Sale Deeds as per Ex.P10 and 11. Further the PW.2 has admitted that, on 06.09.2014 the item No.3 of the suit schedule property was mortgaged in favour of defendant No.8 and obtained loan of Rs.15,00,000/-. Hence, from the cross-examination of PW.2 it clearly goes to show that, the item No.1 and 3 of the suit schedule properties are the self acquired properties of defendant No.1. As stated supra, after demise of defendant No.1 the plaintiff and defendant No.2, 5 to 7 are succeeded to the estate of the deceased defendant No.1. Now the question would arise before the court that, whether the plaintiff is also liable to pay the loan taken by the defendants as per Ex.D1. It is admitted fact that, the defendants have obtained loan from defendant No.8 by mortgaging the item No.3 of the suit schedule property. As per the contents of Ex.D1 the plaintiff is not party to the Ex.D1. The defendants in their written statement contended that, for the benefit of the joint family and

for marriage expenses of the daughters the defendant No.1 and 2 have obtained loan by mortgaging the suit schedule item No.3 of the property and paid tax. However the contents of notice produced at Ex.D2 issued by the defendant No.8 clearly goes to show that, the mortgage period was 3 years however the defendants have neither paid the loan amount of Rs.15,00,000/- nor they have paid interest towards the loan amount of Rs.15,00,000/- to the defendant No.8.

25. The DW.1 has admitted that, the plaintiff and defendant are having equal right over the suit schedule properties and he also admitted that, the loan was obtained by him as per Ex.D1 for his personal purpose and plaintiff has not obtained any loan from the defendant No.8. For better appreciation it is just and relevant to re-produce some of the admitted facts by the DW.1 in the cross-examination which reads as follows;

"ನನ್ನ ತಾಯಿ ಬದುಕಿದ್ದಾಗ ಸದರಿ ಜಮೀನುಗಳನ್ನು ವಿಲೇವಾರಿ ಮಾಡಿಲ್ಲ. ಸದರಿ ಜಮೀನುಗಳು ನನ್ನ ತಾಯಿಯ ಸ್ವರ್ಯಾಜಿತ ಸ್ವತ್ತುಗಳಲ್ಲ ಒಂದು ವೇಳೆ ಸ್ವರ್ಯಾಜಿತ ಸ್ವತ್ತುಗಳು ಆದರೂ ಸಹ ನನ್ನ ತಾಯಿ ತೀರಿಕೊಂಡ ನಂತರ ವಾದಿ ಹಾಗೂ ಪ್ರತಿವಾದಿಯರಿಗೆ ಸದರಿ ಜಮೀನುಗಳಲ್ಲಿ ಸಮನಾದ ಹಕ್ಕು ಇದೆ ಎಂದರೆ ಸರಿ. ವಾದಿ ನನ್ನ ತಮ್ಮ ಎಂದರೆ ಸರಿ. ವಾದಿಗೆ ಮಾತನಾಡುವಾಗ

ತೊದಲುತ್ತಾರೆ ಎಂದರೆ ಸರಿ. ಒಂದು ವೇಳೆ ಜೋರಾಗಿ ಮಾತನಾಡಿದರೆ ವಾದಿಗೆ ವಾಪಸ್ಸು ಮಾತನಾಡಲು ಬರುವುದಿಲ್ಲ ಎಂದರೆ ಸರಿ. ವಾದಿಗೆ ಇಬ್ಬರು ಹೆಣ್ಣು ಮಕ್ಕಳು ಇದ್ದಾರೆ ಎಂದರೆ ಸರಿ. ವಾದಿಯ ಪರವಾಗಿ ಆತನ ಹೆಂಡತಿ ಸಾಕ್ಷ್ಯ ನುಡಿದಿರುತ್ತಾರೆ ಎಂದರೆ ಸರಿ.

8 ನೇ ಪ್ರತಿವಾದಿಗೆ ಸರ್ವೆ ನಂಬರ 46/3, 01 ಎಕರೆ 21 ಗುಂಟೆ ಜಮೀನನ್ನು 15 ಲಕ್ಷ ರೂಪಾಯಿಗೆ ನಿಡಿ-1 ರ ಪ್ರಕಾರ ಆಧಾರ ಮಾಡಲಾಗಿದೆ ಎಂದು ಬರೆಯಲಾಗಿದೆ ಎಂದರೆ ಸರಿ. ನಿಡಿ-1 ರಲ್ಲಿ ಮಾಸಿಕ ಶೇ.2% ಬಡ್ಡಿಯಂತೆ ಆಧಾರ ಮಾಡಲಾಗಿದೆ ಎಂದರೆ ಸರಿ. ನಿಡಿ-2 ರ ನೋಟೀಸ್ 2 ಮತ್ತು 3 ನೇ ಪ್ರತಿವಾದಿಯರಿಗೆ ನೀಡಿದ ನೋಟೀಸ್ ಎಂದರೆ ಸರಿ. ನಿಡಿ-2 ರ ಪ್ರಕಾರ 15 ಲಕ್ಷ ರೂಪಾಯಿಗೆ ಸದರಿ ಸ್ವತ್ತನ್ನು ಭೋಗ್ಯ ಮಾಡಿದ್ದು ಸದರಿ 15 ಲಕ್ಷದ ಮೊತ್ತಕ್ಕೆ ನಾನು ಮತ್ತು 3 ನೇ ಪ್ರತಿವಾದಿಯರು ಒಂದು ರೂಪಾಯಿ ಬಡ್ಡಿಯನ್ನು ಸಹ ಕೊಟ್ಟಿಲ್ಲ ಎಂದು ನೋಟೀಸ್ ನೀಡಿರುತ್ತಾರೆ ಎಂದರೆ ಸರಿ. ಸದರಿ ನೋಟೀಸ್ ನಿಜವಾದರೆ ನಾನು ರೂ.43,20,000/- ಹಣ ಕೊಡಬೇಕಾಗುತ್ತದೆ ಎಂದರೆ ಸರಿ.

ನಿಡಿ-1 ರಲ್ಲಿ ಜಮೀನನ್ನು ಗೃಹ ಕೃತ್ಯದ ಖರ್ಚಿಗಾಗಿ ಹಾಗೂ ಹಿಂದೆ ಮಾಡಿದ ಸಾಲವನ್ನು ತೀರಿಸಲು ಭೋಗ್ಯ ಮಾಡಿರುತ್ತೇನೆ ಎಂದು ಬರೆಯಲಾಗಿದೆ ಎಂದರೆ ಸರಿ. ನಾನು ಬಡ್ಡಿ ರಾಜಣ್ಣರವರಿಂದ 5 ಲಕ್ಷ ಸಾಲ ಪಡೆದುಕೊಂಡಿದ್ದೇನು. ನಾನು ಅಸಲು ಹಾಗೂ ಬಡ್ಡಿ ತೀರಿಸದೇ ಇರುವುದರಿಂದ 5 ಲಕ್ಷ ಸಾಲ 15 ಲಕ್ಷ ಆಗಿರುತ್ತದೆ. 8 ನೇ ಪ್ರತಿವಾದಿಯ ಗಂಡ ಬಡ್ಡಿ ರಾಜಣ್ಣರವರು ನನಗೆ ಯಾವುದೇ ನಗದು ಹಣ ಕೊಟ್ಟಿಲ್ಲ ಎಂದು ನುಡಿಯುತ್ತಾರೆ.

ಸರ್ವೆ ನಂಬರ 46/1 ಹಾಗೂ 46/3 ಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ 1 ನೇ ಪ್ರತಿವಾದಿಗೆ ಮಾತ್ರ ಹಕ್ಕು ಇರುತ್ತದೆ ಬೇರೆ

ಯಾರಿಗೂ ಹಕ್ಕು ಇರುವುದಿಲ್ಲ ಎಂದು ಪ್ರತಿವಾದ ಪತ್ರದಲ್ಲಿ ಹೇಳಿರುತ್ತೇನೆ ಆದರೆ ಎಲ್ಲರಿಗೂ ಸಮನಾದ ಹಕ್ಕು ಇರುತ್ತದೆ ಎಂದು ನುಡಿಯುತ್ತಾರೆ. ನಿಡಿ-1 ರ ಪತ್ರವನ್ನು ನಾನು, 3 ಮತ್ತು 4 ನೇ ಪ್ರತಿವಾದಿಯರು ಸೇರಿ ಬರೆದುಕೊಟ್ಟಿರುತ್ತೇವೆ ಎಂದರೆ ಸರಿ.

ವಾದಿ ಯಾವುದೇ ಸಾಲ ಪಡೆದುಕೊಂಡಿಲ್ಲ ಎಂದರೆ ಸರಿ ನಾನು ಮಾತ್ರ ಪಡೆದುಕೊಂಡಿರುತ್ತೇನೆ ಎಂದು ನುಡಿಯುತ್ತಾರೆ.

ನನ್ನ ಮುಖ್ಯ ವಿಚಾರಣೆಯಲ್ಲಿ ನನ್ನ ತಾಯಿ ತೀರಿಕೊಂಡಿದ್ದರಿಂದ ಸಾಲದ ಹಣಕ್ಕೆ ಬಡಿಯನ್ನು ನಾನು ಪಾವತಿಸಬೇಕು ಎಂದು ನಮೂದು ಮಾಡಿರುತ್ತೇನೆ ಎಂದರೆ ಸರಿ. ನಾನು ಸಾಲ ಪಡೆದುಕೊಂಡಿದ್ದರಿಂದ ಬಡ್ಡಿ ನಾನೇ ಕಟ್ಟಬೇಕು ಎಂದರೆ ಸರಿ."

Hence from the cross-examination of DW.1 it is crystal clear that, the loan was not obtained for the family benefit however it is obtained for personal benefit of the defendants.

26. Furthermore, as per Ex.P13 the defendant No.9 purchased the land in Sy.No.46/2 measuring 2 acres 29 guntas. It is to be noted that, on 10.03.2015 the Sale Deed was executed in favour of defendant No.9 i.e., during the pendency of the suit the Sale Deed was executed by defendant No.1 to 3 in favour of defendant No.9. The contents of the Sale Deed at Ex.P13 goes to show that, the land in Sy.No.46/2 is the ancestral property of

defendant No.1 to 4. The plaintiff is not signatory to the Sale Deed. As stated supra, the defendant No.9 has not filed any written statement and not contested the suit. Since the defendant No.1 passed away the suit schedule properties become the joint family properties of plaintiff and defendant No.1 and 5 to 7. The normal rule which governs Civil proceedings is that a fact is said to be established if it is proved by preponderance of probabilities under Sec.3 of the Evidence Act, a fact is said to be proved when the court either believes it does exist or if it is probable that its existence is so probable that a prudent man ought in the circumstances, to act upon the supposition that it exists. The first step in the process to fix the probabilities is the second to weigh them. In view of the above discussion **Issue No.1 is answered in the Affirmative and Issue No.2 is answered in the Negative.**

27. Issue No.3 : While answering Issue Nos.1 and 2 this Court came to the conclusion that, the suit schedule properties are ancestral and joint family property of plaintiffs. Since the plaintiff defendant No.2 and 5 to 7 are children of Late.Kariyappa and Chinnamma they are entitled for $\frac{1}{5}^{\text{th}}$ share each in the suit

schedule properties. The defendant No.3 and 4 being the wife and son of defendant No.2 together entitle for 1/5th share in the suit schedule properties. **Accordingly Issue No.3 is answered in the Affirmative.**

28. Issue No.4:- In the light of foregoing discussions, this court proceed to pass the following :-

: O R D E R :

The suit of the plaintiff is hereby decreed.

It is declared that, the plaintiff is entitled to 1/5th share in the suit schedule properties.

The defendant No.2 to 4 together entitled for 1/5th share in the suit schedule properties.

Further the defendant No.5 to 7 are also entitled to 1/5th share each in the suit schedule properties.

It is made clear that, the defendants are entitled to their share after payment of court fee.

Looking to the relationship between the parties no order as to costs.

Office to draw preliminary decree
accordingly.

(Dictated to the Stenographer-III directly on computer, corrected, and then pronounced by me in the open Court on this the **13th day of July, 2026**)

(Ayishabi.P.Majid.,)
Prl. Civil Judge & JMFC,
Hunsur.

A N N E X U R E

List of witnesses examined for the plaintiffs:

P.W.1 : Sri.H.K.Ramesha, S/o Late.Kariyappa,
P.W.2 : Smt.Geetha W/o H.K.Ramesha

List of witnesses examined for the defendants:

D.W.1 : Sri. H.K.Mahadevappa S/o Late.Kariyappa

List of documents marked for the plaintiffs :

Ex.P1 : Special Power of Attorney
Ex.P.2 to 4 : RTC extracts
Ex.P.5 and 6 : certified copies of tax paid receipts
Ex.P.7 : Office copy of the legal notice
Ex.P.8 : Postal Acknowledgment
Ex.P.9 : Postal cover.
Ex.P9(a) : Legal notice
Ex.P.10 and 11 : Certified copies of the Sale Deed
Ex.P.12 : Certified copy of the Mortgage Deed
Ex.P.13 : Certified copy of the Sale Deed
Ex.P.14 and 15 : Index of Lands.

- Ex.P16 : Record of Rights,
Ex.P.17 to 22 : Certified copies of the handwritten RTC
extracts
Ex.P.23 and 24 : Camp receipts.

List of documents marked for the defendants:

- Ex.D.1 : Certified copy of Aadhara patra
Ex.D.2 : Copy of legal notice.

**Prl. Civil Judge & JMFC,
Hunsur.**