

KAMS310004572015



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

DATED THIS THE 24th DAY OF MARCH, 2026

:PRESENT:

**SMT.AYISHABI.P.MAJID., B.A.L.L.B.,
Prl. Civil Judge & JMFC.,
Hunsur.**

O. S. No.367/2015

Plaintiff : Sri. Puttasomachari
S/o Late. Eshwarachari
Aged about 54 years
R/at : No.53, Koteamla
Belgola Village and Hobli
Srirangapatna Taluk
Mandya District.

(Rep., by Sri. M.A.N., Adv.,)

V/S

Defendants : 1. Smt. Kamma
W/o Late. Eshwarachari
Aged about 85 years.

2 Sri. Ningachari
W/o Late. Eashwarachari
Aged about 63 years.

3. Sri. Somashekharachari
W/o Late Eashwarachari
Aged about 50 years
Defendant Nos.1 to 3

are R/at : Challahalli Village
Bilikere Hobli
Hunsur Taluk
Mysuru District.

4. Kemalingachari
S/o Late. Muddalingachari
Aged about 74 years
R/at : Challahalli Village
Bilikere Hobli
Hunsur Taluk
Mysuru District.

**(Since died represented
by his Legal heirs)**

D4(a). Smt. Lakshmi
W/o Ramesh
D/o Kempalingachari
Aged about 42 years
R/at : Sathegala Village
Panchavalli Post
Periyapatna Taluk.

D4(b). Shekara
S/o Kempalingachari
Aged about 40 years.

D4(c) Raghu
S/o Kempalingachari
Aged about 38 years.

D4(d) Neela
D/o Kempalingachari
S/o Siddappaji
Aged about 36 years
R/at : Nanjayyanahundi Village
Mysuru Taluk
Mysuru District.

D4(e) Nagendra
S/o Kempalingachari
Aged about 36 years.

D4(f) Kumara
S/o Kempalingachari
Aged about 31 years
LR's of Defendant No.4(b)
(c) and (f) are
R/at : Challahalli Village
Bilikere Hobli
Hunsur Taluk.

(D1 to D3 – by Sri.M.E.P., Advocate)
(D4 – Rep., by Sri. S.S.G., Advocate)

Date of Institution of the Suit	26.08.2015		
Nature of Suit	Suit for Partition and Separate Possession, Permanent Injunction and Declaration .		
Date of Recording of Evidence	12.08.2022		
Date of Closing of Evidence	18.07.2024		
Date of Judgment Pronounced	24.03.2026		
Total Duration	<u>Year's</u>	<u>Month's</u>	<u>Day's</u>
	10	06	29

(Ayishabi.P.Majid.,)
Prl. 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, Permanent Injunction and Declaration in respect of suit schedule properties by metes and bounds and with costs.

2. The brief facts of the plaintiff case is that, the plaintiff is the son of defendant No.1 and brother of defendant No.2 and 3, defendant No.4 is the purchaser of the Item Nos.1 and 2 of the suit schedule properties. The suit schedule properties are ancestral and joint family properties of plaintiff and defendant Nos.1 to 3 initially stands in the name of Late. Kempachari. The properties fallen to the share of Late. Kempachari. At the time partition the Plaintiff's family had properties to their share in agricultural land bearing Sy. No. 72p to an extent of 1 acre 38 guntas, agricultural land bearing Sy. No. 66p, new Sy.No 66 to an extent of 10 guntas, agricultural land bearing Sy No.83/1 to an extent of 1 acre 35 guntas and agricultural land bearing Sy No. 84p to an extent of 1 acre 36 guntas, and they were in peaceful possession and enjoyment of the suit schedule properties. It is further case of the plaintiff that, for legal necessity plaintiff and Defendant Nos.1 to 3

had been sold some portion of properties except suit schedule properties. One month back when the plaintiff asked about the income of the suit schedule property the Defendants Nos.1 to 3 they had started neglect the plaintiff. The Defendant Nos.1 to 3 by colluding with each other had sold the suit schedule property in favour of Defendant No.4 through register Sale Deed dated 27.03.1992. Thereafter when the Plaintiff had question about the property sold by Defendant Nos.1 to 3 by giving evasive answer had refused to give Plaintiff's share over the suit schedule properties. Further that Defendant No.4 knowing full well about the Plaintiff's share over the suit schedule properties with an intention to grab the Plaintiff's share over the suit schedule property had purchase by colluding with defendant Nos.1 to 3. The plaintiff is having share in the suit schedule properties. Hence, he constrained to file this suit for the relief of partition and separate possession.

3. In response to the suit summons, the Defendant Nos.1 to 4 have appeared before Court, however in spite of sufficient opportunity, the defendant Nos.1 to 3 have failed to file written statement and the defendant No.4 has appeared before the Court and filed written statement. During the pendency of the suit the

defendant No.4 reported to be dead and defendant Nos.4(a) to (f) brought on record.

4. The defendant No.4 has filed written statement inter-alia contending that, the plaintiff is not a son of Late. Eshwarachari and he is totally stranger to the family and property of Late. Eshwarachari. The said Late. Eshwarachari died leaving behind his wife Smt. Kamma and two sons by name Ningachari and Somashekarachari along with his daughter Smt. Krishnamma, these are all the persons are the Legal representatives of Eshwarachari not plaintiff. The Defendant Nos.1 to 3 had executed sale deed in his favour with respect to the item Nos.1 and 2 of the suit schedule properties on 27.03.1992 for legal necessity of the family of Late. Eshwarachari i.e., the marriage expensive debt of Krishnamma daughter of Late. Eshwarachari. It is further contended that, he had purchased the item Nos.1 and 2 of the suit schedule properties from the Legal representatives of the Eshwarachari for market value as on that date of purchase of sale deed and he is enjoying the same as absolute owner byway of changing the katha in his name as absolute owner. 3 houses situated at Belagola village, Srirangapatna Taluk, not in period in

the suit. Hence, suit is bad for non-joinder of all the joint family properties. Hence, prays for dismissal of the suit with costs.

5. On basis of pleadings of the parties, my learned predecessor in office has framed the following issues for determination.

ISSUES

1. Whether the plaintiff proves that the suit schedule properties are ancestral and joint family properties of him and defendant Nos.1 to 3 ?
2. Whether the plaintiff proves that, the sale deed dated 27.03.1992 is not binding on the share of the plaintiff?
3. Whether the defendant No.4 proves his contentions at para Nos.12 & 14 of the written statement ?
4. Whether the plaintiff proves the alleged interference by the defendants ?
5. Whether the plaintiff is entitled for 1/4th share in suit schedule properties ?
6. Whether the plaintiff is entitled for the reliefs as sought ?
7. What order or decree?

6. After settlement of Issues, in order to prove their case, the plaintiff entered into the witness box deposed as P.W.1 and got marked documents at Ex.P.1 to Ex.P.4 and closed his side evidence. On the other hand, the defendants have not stepped into witness box and not produced any documents to prove their defense.

7. Heard the arguments. Perused the oral and documentary evidence placed on record.

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

Issue No.1 : In the Negative

Issue No.2 : In the Negative

Issue No.3 : In the Negative

Issue No.4 : In the Negative

Issue No.5 : In the Negative

Issue No.6 : In the Negative

Issue No.7 : As per final order, for the following;

: REASONS :

9. **Issue Nos.1, 2 and 4 :-** As these issues are interconnected, they are taken up together for common discussion in order to avoid repetition of facts and evidence.

10. The plaintiff has filed the present suit against the defendants for the relief of Partition and Separate Possession

claiming share in the suit schedule properties and for permanent injunction against defendant No.4 and declaration that, the Sale Deed dated 27.03.1992 is not binding on the plaintiff. It is the case of the plaintiff that, the suit schedule properties are ancestral and joint family properties of plaintiff and defendant No.1 to 3 khata was standing in the name of propositus Kempachari. The defendant No.1 to 3 in order to deprive the share of plaintiff sold the item Nos.1 and 2 in favour of defendant No.4. The plaintiff and defendants Nos.1 to 3 are in joint possession of the suit schedule properties and there is no partition and separate possession by metes and bounds among the members of the joint family. The defendants No.1 to 3 denied his share in the suit schedule properties.

11. To substantiate his case, the plaintiff has entered into witness box and in his examination-in-chief the plaintiff has reiterated the averments made in the plaint and produced the documents got marked at Ex.P.1 to Ex.P.4. Ex.P.1 is the Sale Deed, Ex.P.2 and Ex.P.3 are the Tax paid receipts, Ex.P.4 is the RTC Extracts.

12. It is to be noted that, to substantiate their case the plaintiff has produced the certified copy of the Sale Deed at Ex.P1 wherein it goes to show that, on 27.03.1992 the defendant No.4 has purchased the item No.1 and 2 of the suit schedule properties from defendant No.1 to 3. Ex.P2 and Ex.P3 are the tax paid receipts wherein it goes to show that, the defendant No.1 has paid tax in respect of item Nos.1 and 2 of the suit schedule properties. The RTC extract produced at Ex.P4 for the year 2014 – 2015 goes to show that, the item No.3 stands in the name of defendant No.1.

13. It is to be noted that, the PW.1 not tendered himself for cross examination and in the cross examination he has submitted that, he has not impleaded the house property bearing No.53 situated at Kottemala and Belagola Village, Srirangapatna Taluk and there are three house properties belongs to the family of the plaintiff and defendant Nos.1 to 3 and the said house properties are not impleaded in the schedule. Thereafter, when case was posted for further cross examination of PW.1 inspite of sufficient opportunity the P.W.1 has not appeared before the court and not tendered himself for cross examination hence, the cross examination of P.W.1 was taken as nil as not tendered for cross examination. It is

well settled principle of law that no oral testimony can be considered satisfactory or valid unless it is testified by cross examination. The PW-1 himself not tendered for further cross examination by the defendants.

14. At this juncture it is relevant to relied upon the decision reported in;

Hon'ble High Court of Karnataka in 2018(4) KCCR 3655, Mahadeva V/ s State of Karnataka by Ramapura Police, Chamarajanagara District wherein it was held that, Evidence Act, 1872 – Section 101 – Facts – Burden to prove lies on person who desires Court to give Judgment as to any legal right or liability dependent on existence of those facts.

The plaintiff shall plead and prove his case. Therefore, this court is of the opinion that, the plaintiff has miserably failed to establish that himself and defendant Nos.1 to 3 constitutes Hindu joint family and suit schedule properties are the ancestral and joint family properties and he is in joint possession of the suit schedule properties and the sale deed in favour of defendant No.4 null and void and not binding on his share. Furthermore, the plaintiff has utterly failed to prove the alleged interference by the defendant

No.4. As such this court answers **Issue Nos.1, 2 and 4 in the Negative.**

15. Issue No.3 :- The burden is upon the defendant No.4 to prove that, the suit of the plaintiff is bad for non-joinder of necessary parties and properties and Late. Eashwarachari sold item Nos.1 and 2 in his favour for legal necessities. To prove his case the defendant No.4 has not entered into witness box. Having taken such defence, he has not stepped into the witness box to lead evidence and not produced the documents. As aforesaid the defendant No.4 has not lead any evidence on his behalf in respect of his contention. When the party do not appear into witness box to prove the defence the presumption would arise that the case set up by the party is incorrect.

16. At this juncture it is relevant to refer the decision reported in;

**AIR 1999 SC 1441 in
Vidhyadhar V/s Manikrao &
Anor,**

**It was held that where a
party to the suit does not
appear into 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.

The decision is aptly applicable to the case on hand. Having taken specific contention, the defendants No.4 ought to have lead evidence on this behalf. The defendant No.4 has failed to do so. The defendant No.4 has not stated his own case on oath and has not offered himself to be cross examined by the plaintiff. Hence, this court has to presume that, the defence set up by the defendant No.4 is incorrect. With these observations the **Issue No.3 is answered in the Negative.**

17. Issue No.5 and 6:- As these issues are interconnected, they are taken up together for common discussion in order to avoid repetition of facts and evidence. While answering Issue Nos.1, 2 and 4 this Court has come to the conclusion that, the plaintiff has miserably failed to prove that, the suit schedule properties are the ancestral and joint family properties and he is entitled for 1/4th share in the suit schedule properties by producing cogent documents before the court as well as by tendering himself for further cross examination by the defendants. Hence, looking from

any angle plaintiff is not entitled for the relief as sought for. As such **Issue No.5 and 6 are answered in the Negative.**

18. Issue No.7 :- For the reasons discussed above, this court proceed to pass the following :-

: O R D E R:

The suit of the plaintiff is hereby Dismissed.

No order as to costs.

Draw decree accordingly.

(Dictated to the Stenographer Grade - III directly on the computer revised, corrected and then pronounced by me in the open court on this 24th day of March, 2026)

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

A N N E X U R E

List of witnesses examined for the plaintiff:

P.W.1 : Sri. Puttasomachari
S/o Late. Eshwarachari

List of witnesses examined for the defendants:

- NIL -

List of documents marked for the plaintiff:

Ex.P.1 : Sale Deed dated 27.03.1992

Ex.P.2 & 3 : Tax paid receipts
Ex.P.4 : RTC Extracts

List of documents marked for the defendants:

- NIL -

**Prl. Civil Judge & J.M.F.C,
Hunsur.**