



**IN THE COURT OF SENIOR CIVIL JUDGE AND
JMFC, K.R.NAGARA**

**Present : Aravindra B.C., B.A., L.L.B.,
Senior Civil Judge & J.M.F.C.,
K.R.Nagar.**

Dated : This the 04th day of August, 2026

R.A. No.3/2022

Appellants : 1. Smt. Hemalatha,
W/o Late Pradeepkumar,
Aged about 44 years.

2. Master Yashavanth
@ Mahendra,
S/o Late Pradeepkumar
and Hemalatha,
Aged about 16 years.

Since he is minor,
Represented by his mother
as natural guardian,
who is the 1st appellant herein.

Both are R/at:
Hirikyathanahalli village,
Gavadagere Hobli,
Hunsur Taluk,
Mysuru District.

(By: Sri. S.S.G., Advocate)
(Defendant No.2 & 3 in Trial Court)

-V/s-

**Respondents: 1. Smt. Rundrambike E.****@ Rohini,**

W/o K.P.Basavaraj,

D/o Late Eshwarappa @ Eshwar,

Aged about 45 years,

R/at: Hospital Quarters,

Govt. General Hospital,

Somawarpet Taluk,

Kodagu District.

2. Smt. Jayabarathi,

W/o Late Eshwarappa @ Eshwar,

Aged about 66 years.

3. Sri. Vasanthasena,

S/o Siddegowda,

Dead by LRs.**3(a). Smt. Manjula,**

W/o Late Vasanthasena,

Aged about 45 years.

3(b). Sri. Chandan,

S/o Late Vasanthasena,

Aged about 22 years.

3(c). Sri. Sachin,

S/o Late Vasanthasena,

Aged about 20 years.

Respondent No.3(a) to 3(c) are

R/at: Hirikyathanahalli village,

Gavadagere Hobli,

Hunsur Taluk,

Mysuru District

4. Sri. H.D. Jayamma,

S/o H.D.Bojegowda,

Aged about 46 years.

**5. Sri. Krishnegowda,**

S/o Devegowda,

Aged about 44 years.

Respondent No.2 to 5 are

R/at: Hirikyathanahalli

Village & Post,

Gavadagere Hobli,

Hunsur Taluk,

Mysuru District.

(R1 by Sri. R.M., Adv.)**(R2 Absent)****(R3(a to c), 4 & 5 By Sri. S.K.M., Adv.)****(R1 is the Plaintiff in Trial Court)****(R2 is the defendant No.1 in Trial Court)****(R3 to 5 are the defendant****No.4 to 6 in Trial Court)**

Date of judgment under appeal	: 27.07.2021
Nature of the suit and Order appealed against	: For Partition and Separate Possession
Date of the Institution of the appeal	: 14.01.2022
Date on which the judgment was pronounced	: 04.08.2026
Duration of Appeal	: Year/s Month/s Day/s 04 06 21

(Aravindra B.C.)**Senior Civil Judge and JMFC,
K.R.Nagar.**

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

The present Regular Appeal is filed by the defendant No.2 and 3 challenging the Judgment and Decree dated 27.07.2021 passed in OS No.272/2014 by the court of the Addl. Civil Judge and JMFC, K.R.Nagar (for short the learned Trial Court) where under the suit for partition and separate possession filed by the plaintiff has been partly decreed.

2. The appellants herein were the defendant No.2 and 3 and the respondent No.1 was the plaintiff, respondent No.2 was the defendant No.1 and the respondent No.3 to 5 were the defendant No.4 to 6 before the Trial Court. For the purpose of brevity and convenience, this court refer the parties in this appeal as per their ranks before the Trial Court.

3. Further, during pendency of the appeal, the respondent No.3 was reported to be dead. Hence, his legal heirs were brought on record.



4. The plaintiff has filed the suit against the defendants seeking the relief of partition and separate possession of 1/3rd share in the plaint schedule properties by metes and bounds and also prayed to declare that the sale deeds dated 06.06.2003, 02.05.2007 and 14.03.2002 are not binding on the rights of the plaintiff's share and also prayed to grant such other reliefs for which the plaintiff is found entitled to.

5. As per the plaint averments, the Eshwar @ Eshwarappa and Jayabharathi had two children namely, Rudrambike @ Rohini who is the plaintiff and Pradeepkumar who is the husband of defendant No.2 and father of minor plaintiff No.3.

6. Further, the case of the plaintiff is that the suit schedule properties are the ancestral and joint family properties of plaintiff and defendant No.1 to 3. The said properties were originally belongs to one Kapaniah. The Eshwar @ Eshwarappa had got changed the katha of the



schedule properties from Kapanaiyah. Prior to marriage of the plaintiff, she was assist her father Eshwarappa to cultivate the suit schedule properties. After her marriage also, she used to visiting her parental house and participated the agricultural activities. After the death of her father, the katha of the suit schedule properties were mutated in the name of defendant No.1. She was managing entire affairs of the joint family properties and there is no partition between the family members and all the joint family members are in joint in possession and enjoyment of the schedule properties.

7. Further, the case of the plaintiff is that on 10.09.2012, the younger brother of plaintiff Pradeepkumar was died. After his death, the defendants have neglected the plaintiff and they have not giving proper accounts and income of the joint family properties. Further, it is stated that the father of plaintiff had obtained a crop loan from the State Bank of India, Mysuru.



8. Further, it is stated that the husband of defendant No.1 was sold the item No.7 of the suit schedule property to one Sri.Vasanth Sena and the defendant No.2 was also sold the item No.8 of the suit schedule property to one Jayamma W/o Bojegowda. Further, the husband of defendant No.1 and her son were sold the item No.9 of the suit schedule property to Krishnegowda. The said sale transactions are not binding on the share of the plaintiff. The plaintiff has requested the defendants to effect partition. But, the defendants have refused to allot her share. Hence, the cause of action was arisen and filed the present suit for the aforesaid reliefs against the defendants before the Trial Court.

9. After presentation of the plaint, the suit was registered before the Trial court and the suit summons have been issued to the defendants. In response to the suit summons, the defendants have appeared before the Trial Court through their respective counsels and they have filed separate written statement.



10. In the written statement, the defendant No.1 has denied all the plaint averments, except the relationship between the plaintiff and defendant No.1 to 3. It is definite case of the defendant No.1 is that she having a share over the suit schedule properties and prays for grant decree of the suit by allotting her $1/3^{\text{rd}}$ share over the suit schedule properties.

11. In the written statement, the defendant No.2 and 3 have denied the entire plaint averments made by the plaintiff and it is definite case of the defendant No.2 and 3 is that the landed properties measuring 2 acres in Sy.No.111 of H.K.Halli village, Sy.No.117 measuring 2 acres 34 guntas were sold for performing the marriage of plaintiff and for discharge of the debts. That apart, the husband of defendant No.2 was drunkard and was not looking after the affair of the defendant No.2 and 3 and he was also not providing maintenance, making use of the said situation, the plaintiff and defendant No.1 have colluded together and



inducing the husband of the defendant No.2 have sold the property bearing Sy.No.110 measuring 1 acre 10 guntas, Sy.No.110 measuring 1 acre 30 guntas of H.K.Halli village and Sy.No.304 measuring 19 guntas. The sale of the above properties were never done for any legal necessities of the family. The defendant No.3 is not party to the sale deeds dated 06.02.2003, 13.02.2008 and 02.05.2007. Further, they have taken contention that the suit is bad for *non-joinder* of necessary parties and properties. Upon these grounds, the defendant No.2 and 3 have prays for dismissal the suit of the plaintiff with cost.

12. In the written statement, the defendant No.4 has denied the entire plaint averments made by the plaintiff and it is definite case of the defendant No.4 is that he has purchased the suit schedule item No.7 in the year 2003 from H.K.Eshwarappa under registered sale deed dated 06.02.2003. The said Eshwarappa has acquired the said property through registered Will dated 05.12.1981. In



pursuance of the sale deed, his name was entered into the revenue records and he is in possession and enjoyment of the said property. The plaintiff has no right over the said property. Upon these grounds, the defendant No.4 has prays for dismiss the suit of the plaintiff with cost.

13. In the written statement, the defendant No.5 has denied the entire plaint averments made by the plaintiff and the it is definite case of the defendant No.5 is that she is the purchaser of the suit schedule item No.8 of the property Sy.No.110 measuring 1 acre 30 guntas from 1st defendant and her son Pradeepkumar under sale deed dated 02.05.2007. Thereafter, the katha of the said property was mutated into her name. Hence, she is the absolute owner in possession and enjoyment of the said property by paying tax to the concerned authority. Now the said property has been rephoded as Sy.No.110/1 and 110/2. The said fact is clearly knowledge of the plaintiff then, also the plaintiff suppressing the true facts and filed this suit to harass this defendant.



Upon these grounds, the defendant No.5 has prays for dismiss the suit of the plaintiff with cost.

14. In the written statement, the defendant No.6 has denied the entire plaint averments made by the plaintiff and it is definite case of the defendant No.6 is that he was the purchaser of the suit item No.9 from H.K.Eshwarappa for valuable sale consideration under registered sale deed dated 14.03.2002. In pursuance of sale deed, his name was entered into the mutation register and he paid tax to the concerned authority and he is in possession of the said property from the date of sale deed. The plaintiff has no manner of right over the said property. Upon these grounds, the defendant No.6 has prays for dismiss the suit of the plaintiff with cost.

15. On the basis of the rival pleadings of the parties, the Trial Court has framed the following issues ;

- 1. Whether the plaintiff proves that suit schedule properties are the ancestral**



joint family properties of plaintiff and defendants No.1 to 3 ?

- 2. Whether the defendant No.2 and 3 proves that suit is bad for non joinder of necessary parties ?**
- 3. Whether the defendant No.2 and 3 further proves that suit is bad for non inclusion of necessary properties ?**
- 4. Whether the plaintiff proves that she is having 1/3rd share in the suit schedule properties?**
- 5. Whether the plaintiff is entitled the legal share in the suit schedule properties ?**
- 6. What order or decree ?**

16. Further, the record shows that on 28.05.2019, the learned Trial Court was framed the following additional issues which reads as under;

- 1. Whether the defendant No.4 proves that he is bona-fide purchaser for valuable consideration of suit schedule item No.7 property ?**
- 2. Whether the defendant No.5 proves that he is the bona-fide purchaser for valuable consideration of suit schedule item No.8 property ?**



3. Whether the defendant No.6 proves that he is the bona-fide purchaser for valuable consider of the suit schedule item No.9 property ?

17. Before the learned Trial Court to substantiate the case of the plaintiff, the plaintiff herself has entered into the witness-box and examined as P.W.1 and the plaintiff has got marked the 12 documents at Exs.P1 to P12 and closed her side evidence.

18. On the other hand, the defendant No.2, 4 to 6 have been examined as DW.1, 2, 4 and 6 respectively and the DW-6 also examined other witnesses as DW-3, 5 and 7 and got marked 22 documents as Ex.D1 to D22 and closed their side evidence.

19. After closure of the evidence of the plaintiff and defendant's side and after hearing the arguments of learned counsel for the plaintiff and defendants, the learned Trial Court has partly decreed the suit of the plaintiff. Being aggrieved by the judgment and decree passed by the Trial



court, the appellants have preferred this Regular Appeal on the grounds mentioned in the appeal memo.

20. This court heard the arguments of learned counsels appearing for appellants and respondents respectively. This court has given anxious consideration to the submissions of the both sides. Meticulously perused the Trial Court Records.

21. Having heard the learned counsel appearing for the parties and taking into consideration the grounds urged in the memorandum of appeal, the following points arise for consideration:

- 1. Whether the findings recorded by the Trial Court on issues is just and proper ?**
- 2. Whether the judgment and decree of the Trial Court is erroneous and liable to be interfered with ?**
- 3. What order ?**

22. The findings on the above points are as follows:-

Point No.1 : Partly in the Affirmative



Point No.2 : Partly in the Affirmative

Point No.3 : As per final order,

For the following:

REASONS

23. **Point No.1 and 2:-** These points are inextricably mixed up with each other. Therefore, this court would like to discuss them together so as to avoid repetition of discussion and confusion.

24. The plaintiff filed present suit before the Trial Court for the relief of partition and separate possession for her legitimate 1/3rd share. Further, also seeking relief of declaration declaring that the sale deed dated 14.03.2002, 06.02.2003 and 02.05.2007 are not binding on the rights and share of the plaintiff's over the schedule properties.

25. It is undisputed facts are that the plaintiff, husband of defendant No.2 and father of defendant No.3 are the children of Late Eshwarappa and defendant No.1. The Eshwarappa was died on 14.04.2004.



26. Initially the plaintiff filed a present suit before the Trial Court against the defendant No.1 to 3. The defendant No.3 is minor represented by his mother defendant No.2 as a natural guardian.

27. As per the order sheet of the Trial Court dated 14.12.2017, the plaintiff was filed an application under order 1 Rule 10(2) of CPC to implead the defendant No.4 to 6. Accordingly, as per order dated 08.02.2018, the defendant No.4 to 6 were brought on record as a defendant No.4 to 6.

28. The plaintiff seeking relief of partition and separate possession with respect to landed properties bearing Sy.No.111/6 measuring 1 acre 8 guntas, Sy.No.112/6 measuring 1 acre 38 guntas, Sy.No.117 measuring 10 guntas, Sy.No.118/3 measuring 2 acres 2 guntas, property janjar No.186 consisting 2 ankanas house, crop loan of Rs.2,00,000/-, Sy.No.117 measuring 2 acres 34 guntas, Sy.No.110 measuring 3 acres and Sy.No.111 measuring 2 acres.



29. Further, important aspect is to be noted that the plaintiff has alleged that the suit schedule properties are the ancestral and joint family properties of herself and defendant No.1 to 3. Further, alleged that the father of plaintiff was acquired the same from his father. Therefore, the plaintiff has to be proved that the suit schedule properties are the ancestral and joint family properties of herself and defendant No.1 to 3.

30. Ancestral property is a species of coparcenary property. Ancestral property is acquired by unobstructed heritage under Mitakshara Hindu Law. The Hon'ble Apex Court of India has held in the case of ***Shyam Narayan Prasad Vs. Krishna Prasad*** reported in ***2018(7) SCC 646 at page No.651 para No.12*** defined ancestral property as, "the property inherited by a male Hindu from his father, father's father or father's father's father is an ancestral property. The essential feature of ancestral property, according to Mitakshara Law, is that the sons, grandsons,



and great grandsons of the person who inherits it, acquire an interest and the rights attached to such property at the moment of their birth. The share which a coparcener obtains on partition of ancestral property is ancestral property as regards his male issue”.

31. In the present case on hand, the plaintiff alleged that the suit schedule properties are the ancestral properties of herself and defendant No.1 to 3. In this aspect, the plaintiff has not pleaded that how his father had acquired the schedule properties. Further, there is no pleading with respect to that the grandfather of plaintiff had properties and the said properties succeeded to the plaintiff's father. The plaintiff has produced the mutation register extracts which is marked at Ex.P4. As per Ex.P4, the katha of the properties stood in the name of Eshwara S/o Kapanaiiah. Further, it reveals that after the death of Eshwarappa, the katha of the properties was mutated in the name of defendant No.1 as Pavathi Varasu. The plaintiff has not



produced any document to show that the suit schedule properties are the ancestral properties of herself and defendants. It is well settled that if the member of the joint family died intestate, his legal heirs have got right over the properties of the deceased person as per Section 8 of the Hindu Succession Act.

32. Further, important aspect is to be noted that during the lifetime of Eshwarappa, he was sold the property bearing Sy.No.111 measuring 2 acres(item No.9) in favour of defendant No.6 under a registered sale deed dated 14.03.2002. The plaintiff has produced the copy of the sale deed dated 14.03.2002 which is marked at Ex.P10. This court perused the Ex.P10 it appears that H.K.Eshwarappa and his son Pradeepkumar were sold the property with specific boundaries East by: Property of Ramegowda, West by: Property of Papanna, North by: Property of Ningajamma, South by: Property of Thimmaiah in land bearing Sy.No.111



measuring 2 acres situated at Hirikyathanahalli village, Gavadagere Hobli, Hunsur Taluk.

33. Further, the father of plaintiff and her brother Pradeepkumar have sold the property bearing Sy.No.117 measuring 2 acres 34 guntas (item No.7) in favour of defendant No.4 under registered sale deed dated 06.02.2003 with specific boundaries East by: Remaining property of plaintiff in Sy.No.117, West by: Property of plaintiff, North by: Property of Krishnegowda and South by: Road situated at Maragowdanahalli village, Hebbalu Hobli, K.R.Nagar Taluk.

34. Further, the defendant No.1 and her son Pradeepkumar E. sold the property bearing Sy.No.110 measuring 1 acre 30 guntas out of 3 acres in favor of Jayamma. Under Registered Sale Deed Dated 02.05.2007 with a specific boundaries East by: Property of Ningajamma, West by: Property of Papanna, North by: Property of Chandrappa and South by: Property of Venkatesh of Hirikyatanahalli village, Gavadagere Hobli, Hunsur Taluk.



35. Admittedly, during the lifetime of Eshwarappa and Pradeepkumar had sold the suit item No.7 and 9 under Ex.P10 and P11. As per Ex.P10, the land bearing Sy.No.111 to an extent of 2 guntas sold under registered sale deed dated 14.03.2002 and the land bearing Sy.No.117 measuring 2 acre 34 guntas sold under registered sale deed dated 06.02.2003.

36. Section 6(1) (A) of the Hindu Succession (Amendment) Act-2005 declares that on and from the commencement of the Act 2005, in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall, (a) by birth become a coparcener in her own right the same manner as the son; As per the Section 6 (1) (b) and (c) of the Amendment Act-2005 rights and liabilities are also conferred on daughters in the coparcenary property as that of a son. The said provision has expressed the declare that any reference to a Hindu Mitakshara



coparcener shall be deemed to include a reference to a daughter of a coparcener.

37. At this stage, it is relevant to refer the decision of Hon'ble Apex Court of India between ***Ganduri Koteshwaramma Vs. Chakiri Yanadi and Another*** reported in ***2011(9) SCC 788*** at page No.784 para No.12 held that "The right accrued to a daughter in the property of a joint Hindu family governed by the Mitakshara Law, by virtue of the 2005 Amendment Act, is absolute, except in the circumstances provided in the proviso appended to sub-section (1) of Section 6. The excepted categories to which new Section 6 of the 1956 Act is not applicable are two, namely, (i) where the disposition or alienation including any partition has taken place before December 20, 2004; and (ii) where testamentary disposition of property has been made before December 20, 2004.

38. Further, the Hon'ble High Court of Karnataka in the case of ***Prakash Vs. Phulavathi*** reported in ***AIR 2016 SC***



769 held that “the rights under amendment are applicable to living daughters of living coparceners as on 09.09.2005 irrespective of when such daughters are born. Disposition or alienation including partitions which may have taken place before 20.12.2004 as per law applicable prior to the said day will remain unaffected”.

39. Further, the Hon’ble Apex Court of India between **Vineeta Sharma Vs. Rakesh Sharma** held that “though the rights can be claimed, w.e.f. 9.9.2005, the provisions are of retroactive application; they confer benefits based on the antecedent event, and the Mitakshara coparcenary law shall be deemed to include a reference to a daughter as a coparcener. At the same time, the legislature has provided savings by adding a proviso that any disposition or alienation, if there be any testamentary disposition of the property or partition which has taken place before 20.12.2004, the date on which the Bill was presented in the Rajya Sabha, shall not be invalidated”.



40. In the present case on hand, during the lifetime of Eshwarappa and Pradeepkumar who are the father and brother of plaintiff have sold the properties under Ex.P10 and P11 prior to 20.12.2004. Therefore, the plaintiff has not entitled share over the said properties.

41. Further, the materials available on record shows that the land bearing Sy.No.110 of Hirikyatanahalli village acquired by the defendant No.1 by inheritance. The defendant No.1 and his son have sold the property bearing Sy.No.110 measuring 1 acre 30 guntas out of 3 acres of Hirikyatanahalli village in favour of defendant No.5. In the said survey number, the total extent is 3 acres and remaining land was not disposed by any one to anybody. The plaintiff has not signed to the sale deed executed by defendant No.1 and his son Pradeepkumar in favour of defendant No.5. Therefore, the defendant No.1 and his son Pradeepkumar have no share in remaining extent of 2 acres 30 guntas. The plaintiff and defendant No.2 and 3 are



entitled share over the schedule properties. The property purchased by defendant No.5 under Ex.P12 is allotted to him in final decree proceedings.

42. Further, the plaintiff seeking the relief of partition with respect to the loan availed by her father from State Bank of India. In this regard, the plaintiff has not placed any materials to show that during lifetime of her father was availed a loan from the bank. Further, the plaintiff has not pleaded anything with regard to that whether the said loan obtained by her father to the benefit of the joint family. Further, there is no materials available on record to show that her father has utilized the loan to the benefits of joint family. Therefore, the plaintiff has not entitled the relief with respect to the item No.6 of the movable property. The Trial Court has granted a decree with respect to the suit item No.6 without examining the materials. Hence, the judgment and decree passed in respect to the item No.6 is not legal one. Accordingly, this court is of the opinion that the Trial



Court has not appreciated the facts and circumstance of the case with respect to the item No.6 of the schedule property. Hence, the suit of the plaintiff with respect to item No.6 is dismissed.

43. On meticulous reading of the pleadings, oral and documentary evidence of the parties, it reveals that there is no dispute regarding with respect to the item No.1 to 5 of the schedule properties. Further the defendant No.4 to 6 have taken contention that they have purchased the property item No.7 to 9 under the registered sale deeds as referred above and they are in lawful possession and enjoyment of the schedule property. The defendants have placed oral and documentary evidence to show that during lifetime of father of plaintiff and brother have sold the item No.7 and 9 to the defendant No.4 and 6. The defendant No.1 and his son have sold the item No.8 measuring 1 acre 10 guntas in favour of defendant No.5. The item No.7 to 9 disposed prior to 20.12.2004. Therefore, the plaintiff has no



share over the said properties. Accordingly, the plaintiff has not entitled share over the properties purchased by the defendant No.4 to 6 under Ex.P10 to P12.

44. In view of the above findings, the learned Trial Court has rightly appreciated the facts and circumstance of the case and partly decreed the suit of the plaintiff with respect to the item No.1 to 5. However, the Trial Court has passed decree with respect to the item No.6 of immovable property without appreciating the evidence of the plaintiff. Therefore, this court do not find any factual or legal error being committed by the Trial Court in partly decreeing the suit of the plaintiff with respect to the item No.1 to 5 and land bearing Sy.No.117 to an extent of 2 acres 10 guntas. Therefore, the judgment and decree of the Trial court is in accordance with law with respect to the item No.1 to 5 and land bearing Sy.No.117 to an extent of 2 acres 10 guntas. In view of findings as discussed above, the Trial Court do not require any interference by this court. However, this court



interfere with regard to the item No.6 of the immovable property. **Accordingly, this court answered to the point No.1 and 2 are Partly in the Affirmative.**

45. **Point No.3**:- In view of the findings on the above points, the following order is passed:-

ORDER

The regular appeal filed by the appellants/defendant No.2 and 3 under Order 41 Rule 1 R/w Section 96 of CPC is allowed in part.

The judgment and decree so passed by the Addl. Civil Judge and JMFC, K.R.Nagar in OS No.272/2014 dated 27.07.2021 is confirmed with respect to the item No.1 to 5 and land bearing Sy.No.117 to an extent of 2 acres 10 guntas. The suit of the plaintiff with respect to the item No.6 is dismissed.

Draw decree accordingly.



Send the Trial Court records
along with copy of the Judgment passed
in this appeal, well in advance to the Trial
Court.

*(Dictated to the stenographer directly on computer, computerized by her, corrected
by me and then pronounced in the open court on the 04th day of August - 2026)*

**(Aravindra B.C.)
Senior Civil Judge and JMFC,
K.R.Nagara.**