



**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 02<sup>nd</sup> day of April, 2026**

**R.A. No.3/2024**

**Appellants : 1. Smt. Kamakshi,**  
W/o Late Ramesha,  
Aged about 49 years.

**2. Sri. Amith,**  
S/o Late Ramesha,  
Aged about 31 years.

Both are R/at:  
Hebbalu village & Hobli,  
K.R.Nagar Taluk.

**(By: Sri. T.G., Advocate)  
(Defendant No.1 & 2 in Trial Court)**

**-V/s-**

**Respondents: 1. Smt. Shashikala,**  
W/o Ramakrishna,  
Aged about 60 years,  
R/at: Muvatthuru village,  
Hebbalu Hobli,  
K.R.Nagar Taluk.

**2. Smt. Geetha,**  
W/o Prakasha,



Aged about 47 years,  
R/at: Jodigowdanakoppalu  
Village, Hebbalu Hobli,  
K.R.Nagar Taluk.

**3. Smt. Jamuna,**  
W/o Prabhakara,  
Dead by her LRs.

**3(a). Sri. Prabhakara,**  
S/o Late Doddamogegowda,  
Aged about 62 years.

**3(b). Sri. Yashwanth,**  
S/o Prabhakara,  
Aged about 34 years.

**3(c). Sri. Hemantha,**  
S/o Prabhakara,  
Aged about 31 years.

Respondent No.3(a) to (c)  
are R/at: Kuppe Village,  
Bilikere Hobli,  
Hunsur Taluk.

**4. Sri. H.K.Somegowda,**  
S/o Late Kalegowda,  
Dead by his LRs.

**4(a). Smt. Jalajakshi,**  
D/o Late H.K.Somegowda,  
Aged about 44 years.

**4(b). Sri. Shivakumara,**  
S/o Late H.K.Somegowda,  
Aged about 41 years.

**4(c). Smt. Vasanthamma,**  
W/o Late H.K.Somegowda,  
Aged about 71 years.



Respondent No.4(a) to (c)  
are R/at: Hebbalu village  
Hebbalu Hobli,  
K.R.Nagar Taluk.

**(R1 by Sri. B.K.P., Adv.)**

**(R2 Exparte)**

**(R3(a to c) Absent)**

**(R4(a to c) by Sri. G.L.D. Adv.)**

**(R1 is the Plaintiff in Trial Court)**

**(R2 to 4 are the defendant No.3  
to 5 in Trial Court)**

|                                               |                                                                |
|-----------------------------------------------|----------------------------------------------------------------|
| Date of judgment under appeal                 | : 09.11.2023                                                   |
| Nature of the suit and Order appealed against | : For Partition and Separate Possession                        |
| Date of the Institution of the appeal         | : 19.01.2024                                                   |
| Date on which the judgment was pronounced     | : 02.04.2026                                                   |
| Duration of Appeal                            | : Year/s    Month/s    Day/s<br>02            02            14 |

**(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 defendants No.1 and 2 challenging the judgement and decree dated 09.11.2023 passed in OS No.557/2015 by the court of the



Prl. 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 decreed.

2. The appellants herein were the defendant No.1 and 2, the respondent No.1 was the plaintiff and the respondent No.2 was the defendant No.3, the respondent No.3 and the legal heirs of respondent No.3 and the respondent No.4 and the legal heirs of respondent No.4 were the defendant No.4 and her legal heirs and defendant No.5 and his legal heirs 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. The plaintiff has filed the suit against the defendants seeking the relief of partition and separate possession of 1/4<sup>th</sup> share in the plaint schedule properties by metes and bounds and to declare that the sale deed dated 18.02.2015 is not binding on legitimate share of the plaintiff and also



prayed to grant such other reliefs for which the plaintiff is found entitled to.

4. As per the plaint averments, the plaintiff is the daughter of late Jayaramegowda and Rajamma, the defendant No.1 is the wife of Late Ramesha who was the son of Jayaramegowda. The defendant No.2 is a son of defendant No.1 and the defendant No.3 and 4 are the daughters of Jayaramegowda. The defendant No.5 is the purchaser of the 'B' schedule property.

5. Further, the case of the plaintiff is that the father of plaintiff Jayaramegowda had acquired the schedule properties from her father late Lakshmegowda. After the death of Lakshmegowda, the said Jayaramegowda was managed the joint family as a kartha. He was died on 22.04.2011 leaving behind the plaintiff and defendants as a legal representatives. The plaintiff's grandfather by name, Lakshmegowda had acquired the property bearing Sy.No.224/2 measuring 30 guntas, Sy.No.397/2 measuring



39 guntas and Sy.No.423/2 measuring 16 guntas. The katha of the said properties standing in the name of Late Ramesh H.J. who is the brother of plaintiff.

6. Further, the case of the plaintiff is that during the lifetime of Jayaramegowda, he was sold the 'B' schedule property to the defendant No.5 without consent of the plaintiff under the registered sale deed dated 18.02.2005. The said sale deed is not binding on the plaintiff. The plaintiff has approached the defendants to allot her legitimate share in the schedule properties. But, the defendants have refused to allot her legitimate share over the suit schedule properties. Hence, the cause of action was arisen and filed the present suit for the aforesaid reliefs against the defendants before the Trial Court.

7. 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 defendant No.1, 2 and 5 have appeared



before the Trial court through their counsel and filed written statement. In spite of service of summons, the defendant No.3 and 5 have not appeared before the Trial Court. Hence, they have been placed ex parte. Further, the record shows that during pendency of the suit before the Trial Court, the defendant No.5 was reported to be dead and his legal representatives were brought on record. Further, the record shows that the defendant No.4 was also reported to be dead and his legal representatives were brought on record.

8. In the written statement, the defendant No.1 and 5 have denied all the averments made in the plaint except the relationship between the plaintiff and defendant No.1 to 4. It is definite case of the defendant No.1 and 5 is that there was oral partition between the family members of the plaintiff and the husband of defendant No.1. In the said oral partition, the husband of defendant No.1 had got Sy.No.423/2 to an extent of 16 guntas and 397/2 to an extent of 39 guntas. The land bearing Sy.No.224/2 to an



extent of 1 acre 30 guntas was given to the Jayaramegowda and out of the said extent, he was sold 1 acre of land to the defendant No.5 under registered sale deed dated 18.02.2005. After the death of defendant No.5, the katha has been changed into his wife by name, Smt.Vasanthamma. The said Vasanthamma is not made as a party to the suit.

9. Further, contended that the properties allotted to the plaintiff and defendant No.3 to 4 were sold by the Jayaramegowda in favour of H.B.Shankaregowda and H.B.Shivappa in the year 1995-96, at the time of marriage of defendant No.3 and 4 to meet the loans availed for the purpose of marriage. The said Shankaregowda and Shivappa are not made as parties to the suit and also properties were not included in the suit. Further, contended that the father of plaintiff was sold the land bearing Sy.No.424/2 to an extent of 29 guntas in favour of one Ramegowda. The said Ramegowda is not made as a party to the suit.



10. Further, the defendant No.5 has contended that the 'B' schedule property is self acquired property of Jayaramegowda. He was sold the said property in favour of defendant No.5 under registered sale deed dated 18.02.2005. From the date of sale deed, the defendant No.5 is in possession and enjoyment of the said property. Hence, prays for dismissal of the suit of the plaintiff with cost.

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

- 1. Whether the plaintiff proves that the suit schedule property is the ancestral property of plaintiff and defendants ?**
- 2. Whether the plaintiff proves that she is having 1/4th share in the suit schedule property ?**
- 3. Whether the defendant No.5 proves that suit 'B' schedule is the self acquired property of father of the plaintiff ?**
- 4. Whether the plaintiff is entitled for the relief sought ?**

**5. What order or decree ?**

**Additional issue dated**  
**04.01.2020**

- 1. Whether the defendant No.1 proves that the suit is bad for non-joinder of necessary parties ?**

**Additional issue dated**  
**17.06.2022**

- 1. Whether the defendant No.1 proves that the suit is bad for non-joinder of necessary properties ?**

12. Before the learned Trial Court to substantiate the case of the plaintiff, the plaintiff herself entered into the witness-box and examined as P.W.1. The plaintiff has got marked the 6 documents at Exs.P1 to P6 and closed her side evidence.

13. On the other hand, the defendant No.1 herself examined as DW.1 and also examined three more witnesses as DW-2 to 4 and got marked 1 document as Ex.D1 and closed their side evidence.



14. 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 decreed the suit of the plaintiff and ordered and decreed that the plaintiff is entitled 1/4<sup>th</sup> share over the suit schedule properties. 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.

15. This court heard the arguments of Sri. T.G. and Sri. B.K.P., and Sri. G.L.D., 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.

16. 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 appellants have made out grounds to allow the application under Order 41 Rule 27 of CPC ?**
- 3. Whether the judgment and decree of the Trial Court is erroneous and liable to be interfered with ?**
- 4. What order?**

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

**Point No.1 : In the Affirmative**  
**Point No.2 : In the Negative**  
**Point No.3 : In the Negative**  
**Point No.4 : As per final order,**  
**For the following:**

### **REASONS**

18. **Point No.1 to 3:-** 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.



19. It is undisputed fact is that the late Jayaramegowda and Rajamma had got three children namely, Shashikala (plaintiff), Ramesh who is the husband of the defendant No.1, Smt.Geetha(defendant No.3) and Smt.Jamuna (deceased defendant No.4). Further, undisputed fact is that the suit schedule properties were acquired by late Jayaramegowda from his father Lakshmegowda. Further, undisputed fact is that during the lifetime of Jayaramegowda, he was sold the land bearing Sy.No.224/2 to an extent of 1 acre in favour of defendant No.5. Further, undisputed fact is that the late Jayaramegowda was sold the land bearing Sy.No.307/15 and 307/17 to an extent of 1 acre 13 guntas in favour of Shankaregowda and Shivappa. Further, the said Jayaramegowda was sold the land bearing Sy.No.424/2 to an extent of 29 guntas in favour of Ramegowda.

20. Further, important aspect is to be noted that the plaintiff has not claimed any share over the land bearing Sy.No.307/15 and 307/17 to an extent 1 acre 13 guntas and



Sy.No.424/2 to an extent of 29 guntas. On the other hand, the defendant No.1 was taken contention that the plaintiff has not included the above said properties in the suit and also contended that the purchasers of the above said properties were not made as a parties to the suit. The plaintiff has not claiming any share over the above said properties and the said sale deeds were executed by the father of plaintiff prior to 20.12.2004. Hence, the plaintiff has not entitled share over the said properties. Hence, the question of including the properties as well as parties does not arise for consideration.

21. The plaintiff has filed the suit for the relief of partition and separate possession in the schedule properties. According to plaintiff, the suit schedule properties are the joint family properties herself and defendant No.1 to 4. On the other hand, the defendants have not denied the said fact. The defendants have contended that there was oral



partition took place between the plaintiff and the husband of defendant No.1.

22. The PW-1/Smt.Shashikala, the plaintiff of this case has reiterated the plaint averments in her evidence on oath. She specifically says that, she is the daughter of late Jayaramegowda. Further, she says that the suit schedule properties are the joint family properties of herself and defendant No.1 to 4. She has requested the defendants to effect partition. But, the defendants did not do so.

23. On the other hand, the defendant No.1 and 5 have not denied the relationship of the plaintiff with the defendant No.1 to 4. In order to prove the substantiate case of the plaintiff, the plaintiff herself examined as PW-1 and she has produced the 6 documents which marked at Ex.P1 to P6. On careful reading of the pleadings of both parties, and gathered that there is no dispute regarding relationship of the plaintiff and defendant No.1 to 4. Therefore, the plaintiff and the husband of defendant No.1 and defendant No.3 and



4 are the children of Jayaramegowda. Further, undisputed fact is that the said Jayaramegowda was died leaving behind the plaintiff and defendants.

24. Further, important aspect is to be noted that, the defendants have taken contention that there was a oral partition took place between the family members of the plaintiff and the husband of defendant No.1. In the said oral partition, the husband of defendant No.1 had got property bearing Sy.No.423/2 to an extent of 16 guntas and 39 guntas in Sy.No.397/2. In this aspect, the defendants have not produced any documents to show that there was oral partition took place between the family members of the plaintiff and the husband of defendant No.1.

25. Further, the defendant No.1 has not stated when the oral partition took place between the plaintiff and the husband of defendant No.1. Further, the defendant No.1 has not stated that under oral partition which properties were allotted to the share of the plaintiff. The defendant No.1 has



pleaded in the written statement is that the land bearing Sy.No.423/2 and 397/2 to an extent of 16 guntas and 39 guntas respectively allotted to the husband of defendant No.1. But, the defendant No.1 has not pleaded in the written statement that which properties were allotted to the plaintiff. In the absence of such materials of facts, the version of the defendant No.1 cannot be accepted.

26. As per Section 6(5) of the Hindu Succession Act, the partition means, as any partition made by execution of deed of partition duly registered under the Registration Act-1908 or partition effected by a court decree. Proviso to Section 6(1) Hindu Succession (Amendment) Act-2005 protects, the disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20.12.2004. The Hon'ble Apex Court has held in the case of ***Prakash Vs. Phulavathi***, disposition or alienation including partitions which may have taken place



before 20.12.2004 as per law applicable prior to the said date will remain unaffected.

27. At this stage it is relevant to refer the decision of the Hon'ble Apex court between **Vineeta Sharma Vs Rakesh Sharma** reported in **2020 (9) SCC page No.1** wherein, the Hon'ble High Court held at para No.134 to 136 which reads as under;

***134. The protection of rights of daughters as coparcener is envisaged in the substituted Section 6 of the Act of 1956 recognises the partition brought about by a decree of a court or effected by a registered instrument. The partition so effected before 20.12.2004 is saved.***

***135. A special definition of partition has been carved out in the explanation. The intendment of the provisions is not to jeopardise the interest of the daughter and to take care of sham or frivolous transaction set up in defence unjustly to deprive the daughter of her right as coparcener and prevent nullifying the benefit flowing from the provisions as substituted. The statutory provisions made in section 6(5) change the entire***



***complexion as to partition. However, under the law that prevailed earlier, an oral partition was recognised. In view of change of provisions of section 6, the intendment of legislature is clear and such a plea of oral partition is not to be readily accepted. The provisions of section 6(5) are required to be interpreted to cast a heavy burden of proof upon proponent of oral partition before it is accepted such as separate occupation of portions, appropriation of the income, and consequent entry in the revenue records and invariably to be supported by other contemporaneous public documents admissible in evidence, may be accepted most reluctantly while exercising all safeguards. The intendment of Section 6 of the Act is only to accept the genuine partitions that might have taken place under the prevailing law, and are not set up as a false defence and only oral ipse dixit is to be rejected outrightly. The object of preventing, setting up of false or frivolous defence to set at naught the benefit emanating from amended provisions, has to be given full effect. Otherwise, it would become very easy to deprive the daughter of her rights as a coparcener. When such a defence is taken, the Court has to be very extremely careful in accepting the same, and only if very***



***cogent, impeccable, and contemporaneous documentary evidence in shape of public documents in support are available, such a plea may be entertained, not otherwise. We reiterate that the plea of an oral partition or memorandum of partition, unregistered one can be manufactured at any point in time, without any contemporaneous public document needs rejection at all costs. We say so for exceptionally good cases where partition is proved conclusively and we caution the courts that the finding is not to be based on the preponderance of probabilities in view of provisions of gender justice and the rigor of very heavy burden of proof which meet intendment of Explanation to Section 6(5). It has to be remembered that courts cannot defeat the object of the beneficial provisions made by the Amendment Act. The exception is carved out by us as earlier execution of a registered document for partition was not necessary, and the Court was rarely approached for the sake of family prestige. It was approached as a last resort when parties were not able to settle their family dispute amicably. We take note of the fact that even before 1956, partition in other modes than envisaged under Section 6(5) had taken place.***



**136. The expression used in Explanation to Section 6(5) 'partition effected by a decree of a court' would mean giving of final effect to actual partition by passing the final decree, only then it can be said that a decree of a court effects partition. A preliminary decree declares share but does not effect the actual partition, that is effected by passing of a final decree; thus, statutory provisions are to be given full effect, whether partition is actually carried out as per the intendment of the Act is to be found out by Court. Even if partition is supported by a registered document it is necessary to prove it had been given effect to and acted upon and is not otherwise sham or invalid or carried out by a final decree of a court. In case partition, in fact, had been worked out finally in toto as if it would have been carried out in the same manner as if affected by a decree of a court, it can be recognized, not otherwise. A partition made by execution of deed duly registered under the Registration Act, 1908, also refers to completed event of partition not merely intendment to separate, is to be borne in mind while dealing with the special provisions of Section 6(5) conferring rights on a daughter. There is a clear legislative departure with respect to proof of**



***partition which prevailed earlier; thus, the Court may recognise the other mode of partition in exceptional cases based upon continuous evidence for a long time in the shape of public document not mere stray entries then only it would not be in consonance with the spirit of the provisions of Section 6(5) and its Explanation.***

28. In the present case on hand also the defendant No.1 has not placed any materials before the Trial Court as well as this court to show that the alleged oral partition took place between the family members of the plaintiff and the husband of defendant No.1 was acted upon. Hence, in the absence of such material facts, the contention taken by the defendant No.1 with respect to that there was oral partition took place between the family members of the plaintiff and the husband of defendant No.1 cannot be accepted.

29. Further, the defendant No.5 who is the purchaser of the 'B' schedule property has taken contention that the 'B' schedule property is self acquired property of deceased



Jayaramgowda. As per Section 101 and 103 of the Indian Evidence Act, the burden lies on the defendant No.5 to prove that the 'B' schedule property is self acquired property Jayaramgowda. In order to prove the same, the defendant No.5 nor his legal heirs have not been examined before the Trial Court. Further, the defendant No.1 was also not produced any document to show that the 'B' schedule property was self acquired property of deceased Jayaramgowda. Hence, the defendant No.5 has failed to prove that the 'B' schedule property was self acquired property of deceased Jayaramgowda.

30. Admittedly, the deceased Jayaramgowda was sold the 'B' schedule property to the defendant No.5 under registered sale deed dated 18.02.2005. As per Section 6 of Hindu Succession of Amendment Act-2005, confer status of coparcener on the daughter born before or after amendment in the same manner as son with same rights and liabilities. Accordingly, the daughter was also entitled



share along with sons. In the present case on hand, the Jayaramegowda was sold the property on or after 20.12.2004. As on the date of sale deed dated 18.02.2005, the plaintiff was born and she is entitled share over the property. The said Jayaramegowda has no salable interest over the entire 'B' schedule property. Hence, the sale deed executed by the deceased Jayaramegowda in favour of defendant No.5 is not binding on the share of the plaintiff.

31. Further, the appellants have filed application under Order 41 Rule 27 of CPC for production of additional documents in order to adduce additional adduce. It is well settled that Rule 27 under Order 41 of the CPC enumerates the circumstances in which the appellate court may admit additional evidence, whether oral or documentary in appeal, and they are, i) Where the lower court has improperly refused to admit evidence which ought to have been admitted, or ii) Where such additional evidence was not within the knowledge of the party or could not, after the



exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or iii) Where the appellate court requires such evidence either to enable it to pronounce judgment, or for any other substantial cause.

32. As a general rule, in terms of sub-rule (1) of Rule 27, the appellate court is to decide an appeal on the evidence led by the parties before the trial court and is not to admit additional evidence for the purpose of disposal of an appeal. Section 107 (1) (d), however carves out an exception to the general rule, and empowers the appellate court to take additional evidence or requires such evidence to be taken subject to the conditions laid down in Rule 27 of Order 41.

33. It is further settled that the basic principles of admission of additional evidence is that the person seeking admission of additional evidence should be able to establish that with the best efforts such additional evidence could not have been adduced at the first instance. The Hon'ble Apex Court held in the case of ***Shivajirao Nilangekar Patil Vs.***



***Mahesh Madhav Gosavi and Others*** reported in **1987 (1) SCC 227** wherein, the Hon'ble Apex Court made observation in the above cited judgment that the basic principle of admission of additional evidence is that the person seeking the admission of additional evidence should be able to establish that with the best efforts such additional evidence could not have been adduced at the first instance. Secondly the party affected by the admission of additional evidence should have an opportunity to rebut such additional evidence. Thirdly that additional evidence was relevant for the determination of the issue

34. In support of their application, the appellants have produced the certified copy of the sale deed dated 05.03.1992 and 02.03.1992. Further, they have also produced the revenue documents pertaining to the land bearing Sy.Nos.307/3, 307/4, 307/5, 424/2, 281/2 and 281/5. On perusal of these documents, the plaintiff has not claimed any right over the above said properties. Hence, the application



filed the appellants under Order 41 Rule 27 of CPC not maintainable.

35. In view of above discussions, this court is of the opinion that the plaintiff has proved that the suit schedule properties are the joint family properties of herself and defendant No.1 to 4. The plaintiff being a daughter of deceased Jayaramegowda has entitled  $1/4^{\text{th}}$  share in the 'A' schedule properties. The defendant No.3 is also entitled  $1/4^{\text{th}}$  share and the defendant No.1 and 2 together are entitled  $1/4^{\text{th}}$  share and the defendant No.4(a to c) are entitled  $1/4^{\text{th}}$  share in the 'A' schedule property. The plaintiff and defendant No.3 are entitled  $1/5^{\text{th}}$  share in the 'B' schedule property and the defendant No.1 and 2 together entitled  $1/5^{\text{th}}$  share in the 'B' schedule property and defendant No.4(a to c) are entitled  $1/5^{\text{th}}$  share in the 'B' schedule property. The legal heirs of the defendant No.5 are entitled  $1/5^{\text{th}}$  share of deceased Jayaramegowda in the 'B' schedule property.



36. In view of the above findings, the learned Trial Court has rightly appreciated the facts and circumstance of the case and decreed the suit of the plaintiff. Therefore, this court do not find any factual or legal error being committed by the Trial Court in decreeing the suit of the plaintiff. Therefore, the judgment and decree of the Trial court is in accordance with law. In view of findings as discussed above, the Trial Court do not require any interference by this court. **Accordingly, this court answered point No.1 is in the Affirmative and the point No.2 and 3 are in the Negative.**

37. **Point No.4**:- In view of the findings on the above points, the following order is passed:-

### **ORDER**

The regular appeal filed by the appellants/defendant No.1 and 2 under Order 41 Rule 1 R/w Section 96 of CPC is dismissed with cost.

The judgment and decree so passed by the Pri. Civil Judge and JMFC,



K.R.Nagar in OS No.557/2015 dated  
09.11.2023 is confirmed.

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 02<sup>nd</sup> day of April - 2026)*

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