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**IN THE COURT OF THE HONOURABLE I ADDITIONAL CIVIL
JUDGE & JMFC, AT KRISHNARAJANAGAR.**

PRESENT: SMT.ASRINA.,B.A, LLB.
I ADDL. CIVIL JUDGE AND JMFC, KRISHNARAJANAGAR.

DATED THIS 2ND DAY OF APRIL, 2026.

O.S.No.472/2022

PLAINTIFF	Sri. Arun Kumar, S/o K.R.Devanath, Aged:42 years, R/at:Doddakempegowdana Koppalu Village, Hebbalu Hobli, K.R.Nagar Taluk, Mysuru District. (By Shri.M.C.S. Advocate)
DEFENDANTS	1. K. R. Devanath, (Since Dead, R/by his LR's) S/o Late Ramegowda, R/at:Doddakempegowdana Koppalu Village, Hebbalu Hobli, K.R.Nagar Taluk, Mysuru District. 1(a) Smt.Vanajakshi, W/o Late K.R. Devanath, Aged:52 years, R/at:Doddakempegowdana Koppalu Village, Hebbalu Hobli, K.R.Nagar Taluk, Mysuru District. 2. Smt.Devaki, W/o Late Kiran Kumar, Aged: 40 years.

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	3. Sri.Gagan, S/o Late Kiran Kumar, Aged:20 years, Defendants No.2 and 3 are R/at: Salekoppalu Village, Chunchanakatte Hobli, K.R.Nagar Taluk, Mysuru District. (Defendant No.1 is placed exparte) (Defendant No.1(a): In-person) (Defendants No.2 and 3 by: Shri. A.T.Adv)
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Date of Institution of suit	13/09/2022
Nature of suit	Suit for Partition and for mesne profits.
Date of recording of evidence	27/02/2025
Date of Judgment	02/04/2026
Total duration	Years/s Month/s Day/s -03- -06- -20-

(SMT.ASRINA)
I ADDL. CIVIL JUDGE & JMFC.,
KRISHNARAJANAGAR.

J U D G M E N T

Plaintiff has filed the present suit as against the defendants for the relief of partition and separate possession of his 1/3rd share in the suit property, for mesne profits, for costs of the suit and for such other reliefs.

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**2. The brief facts of plaintiff's case is as under:**

It is the case of the plaintiff that the defendant No.1 is his father, defendant No.1(a) is his mother. It is the case of the plaintiff that the defendant No.2 is wife and defendant No.3 is son of deceased brother of the plaintiff namely Mr.Kiran Kumar. It is the case of the plaintiff that the suit property originally belonged to his grandfather namely Mr.Ramegowda and after his death, the suit property was mutated to the name of the defendant No.1 herein on the basis of inheritance. As such, the plaintiff has claimed that the suit property is a ancestral and joint family property of himself and the defendants. Therefore the plaintiff has claimed that himself and the defendants are the Co-owners in joint possession of the suit property. It is the case of the plaintiff that himself and the defendants being the co-owners of the suit property, they are in joint possession and enjoyment of the suit property. It is the case of the plaintiff that the suit property is not yet divided in between himself and the defendants. It is the grievance of the plaintiff that after the death of his grand-father, the defendant No.1 has illegally mutated the suit property to his sole name. It is the grievance of the plaintiff that by taking undue advantage of illegal entries of his name in the revenue records of the suit property, the defendant No.1 is illegally trying to alienate the suit property with a *malafide* intention to defeat the legitimate rights of the plaintiff over the suit property. It is the case of the plaintiff that on 25/08/2022 the plaintiff has approached the defendants and requested them to partition the suit property and to give his

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legitimate 1/3rd share in the suit property. But the defendants did not agree to partition the suit property and the defendants have refused to give legitimate share of the plaintiff in the suit property. It is the case of the plaintiff that with an intention to deprive the legitimate undivided share of the plaintiff in the suit property, the defendants are denying the share of the plaintiff in the suit property. The plaintiff has contended that he being the co-owner of the suit property, he has his undivided 1/3rd share in the suit property. But the defendants are avoiding to give the legitimate 1/3rd share to the plaintiff in the suit property. Therefore, having no other efficacious remedy, the plaintiff has filed the present suit to partition the suit property and to allot his 1/3rd share in the suit property with metes and bounds. According to the plaintiff the cause of action to file the above suit arose 25/08/2022, the date on when the defendants have refused to partition the suit property and to give the legitimate undivided share to the plaintiff in the suit property. Hence with the above plea the plaintiff has prayed to decree the suit.

3. In pursuance to the summons issued by this court, the defendants No.2 and 3 have entered their appearance before this court through their counsel and the defendants No.2 and 3 have contested the above suit by filing their detailed written statement. In spite of service of summons on him, the defendant No.1 did not appear before this court. Hence, the defendant No.1 was placed ex-parte.

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4. The defendants No.2 and 3 have filed their written statement wherein they have admitted the relationship between the parties to this suit. The contention of the plaintiff that the suit property is the ancestral and joint family property of the plaintiff and the defendants was denied by the above defendants. The contention of the plaintiff that the plaintiff and the defendants are the Co-owners of the suit property is also denied by the defendants No.2 and 3. The claim of the plaintiff for partition of the suit property was also denied by the defendants No.2 and 3. By denying rest of the plaint averments the defendants No.2 and 3 have categorically contended that the present suit is a collusive suit filed by the plaintiff in collusion with the defendant No.1 with an intention to defeat the legitimate share of the defendants No.2 and 3 in the suit property. It is the contention of the above defendants that on 01/02/2013, the husband of the defendant No.2 and father of the defendant No.3 namely Mr.Kiran Kumar has died. It is the contention of the above defendants that after the death of Mr.Kiran Kumar, the suit property was orally partitioned in between the plaintiff and the defendants, in which an extent of 1 acre of land in the suit property was allotted to the share of the defendants No. 2 and 3 and an extent of 37 guntas of land in the suit property was allotted to the share of the plaintiff herein. It is the contention of the above defendants that since the defendant No.3 was minor, the defendant No.2 used to cultivate her share of 1 acre of land in the suit property through the

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plaintiff. It is the contention of the above defendants that with an intention to grab the 1 acre of land in the suit property, the defendant No.1 herein had also gifted an extent of 1 acre 17 guntas of land in the suit property in favour of the plaintiff herein on 03/07/2019. It is the contention of the above defendants that when the plaintiff has tried to mutate the suit property to his name on the basis of the aforesaid gift deed, the defendants No.2 and 3 have filed their objections, due to which the suit property was not mutated to the name of the plaintiff herein. It is the contention of the above defendants that the plaintiff has not properly valued the suit and the court fee paid by him is insufficient. The above defendants have contended that by suppressing all the true and material facts the plaintiff has filed the present false suit. The above defendants have contended that there is no cause of action to file the above suit and the alleged cause of action shown by the plaintiff is false and fictitious. The plaintiff has not approached this court with clean hands. The above defendants have contended that the above suit being the false suit the above defendants have prayed to dismiss the suit by awarding the compensatory costs. Hence, with the above contentions, the defendants No. 2 and 3 have prayed for dismissal of the suit with costs.

5. On the basis above pleadings and rival contentions learned predecessor in office has framed the following issues:

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1. Whether the plaintiff proves that the suit schedule property is the ancestral and joint family property of the plaintiff and defendants?
2. Whether the plaintiff further proves that, the defendants refused to allot the share of the plaintiff over the suit schedule property?
3. Whether the plaintiff is entitled for the relief of partition as sought for?
4. What order or decree?

6. In order to establish the case of the plaintiff, the plaintiff has stepped into the witness box and examined himself as Pw.1 and got marked Exhibit P-1 and Ex.P-2 documents. On the other hand, in spite of sufficient opportunities, the defendants have not led their evidence. Hence defendant side evidence was taken as nil. Thereafter the trial was concluded and the case was posted for arguments on merits.

7. Heard arguments from counsel for plaintiff. In spite of giving sufficient opportunities, no arguments canvassed on behalf of the defendants.

8. On perusal of the pleadings, oral and documentary evidence placed before the court, my findings to the above issues are as hereunder:

Issue No.1: In the Negative.

Issue No.2: In the Affirmative.

Issue No.3: In the Partly Affirmative.

Issue No.4: As per the final orders for the following:

KAMS410034632022**REASONS**

9. ISSUE NO.1: The Plaintiff has filed the present suit as against the defendants for the relief of partition and separate possession of his undivided 1/3rd share in the suit property by contending that the suit property is the ancestral and joint family property of the plaintiff and the defendants and that the plaintiff and the defendants are the co-owners of the suit property. Since it is the plaintiff who has asserted that the suit property is the ancestral and joint family property of parties to this suit, Issue No.1 was framed casting burden on the plaintiff to prove the same.

10. In support of his case, the plaintiff has examined himself as Pw.1 and the plaintiff has relied on the Ex.P-1 and Ex.P-2 documents.

11. In this case the relationship between the parties to this suit is not in dispute. Ex.P-1 is a family genealogy of parties to this suit submitted by the plaintiff. Ex.P-1 is a undisputed document and the same proves and establishes the relationship between the parties to this suit. Moreover, though the defendants No.2 and 3 have contested the suit, but they have categorically admitted the relationship between the parties to this suit. Hence the relationship between the parties to this suit is established.

12. Ex.P-2 is a RTC of the suit property for the year 2022-23. Ex.P-2 is a undisputed document and the same discloses the

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name of father of the plaintiff namely the defendant No.1 herein as a owner and possessor of the suit property. Ex.P-2 being a undisputed document, column No.9 of Ex.P-2 document discloses the name of father of the plaintiff namely the defendant No.1 Mr.K.R.Devanath as a owner of the suit property. Thereby the Ex.P-2 document proves and establishes that the suit property is a property of father of the plaintiff namely the defendant No.1 herein.

13. As held above, the relationship between the parties to this suit is not in dispute. Admittedly the defendant No.1 is father of the plaintiff and father-in-law of defendant No.2 as well as grand-father of the defendant No.3. Admittedly the defendant No.1(a) is wife of defendant No.1 herein. Admittedly the defendant No.1 has died during the pendency of this suit.

14. Admittedly the defendant No.1 has died intestate leaving behind the plaintiff and the defendants herein as his only class-I legal heirs and successors to succeed his estate. Upon intestate death of the defendant No.1 Mr.K.R.Devanath, the suit property will jointly devolve upon his only surviving class-I legal heirs namely the plaintiff and the defendants herein. The suit property being the separate and absolute property of the defendant No.1, the same will not become the ancestral or joint family property in the hands of his son and nor will the suit property becomes the ancestral or joint family property in the hands of his wife namely

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the defendant No.1(a) and daughter-in-law namely the defendant No.2 and grand-son namely the defendant No.3. The suit property being the separate and absolute property of father of the plaintiff namely the defendant No.1 K.R.Devanath, the same cannot be termed as a ancestral and joint family property of the plaintiff and the defendants. Rather it can be said that the suit property is a inherited property of the plaintiff and the defendants. Accordingly I conclude that the suit property is not the ancestral and joint family property of the plaintiff and the defendants. Rather it is their inherited property which the plaintiff and the defendants have inherited from deceased defendant No.1 K.R.Devanath as his class-I legal heirs as per Sec.8 to 10 of Hindu Succession Act.

15. Accordingly by holding that the suit property being the inherited property of the plaintiff and the defendants from deceased defendant No.1 namely Mr. K.R. Devanath, the suit property will not become the ancestral or joint family property of the plaintiff and the defendants. Accordingly for what has been discussed above **I answer Issue No.1 in the Negative.**

16. ISSUE NO.2: It is the case of the plaintiff that he being the co-owner of the suit property, he is entitled for his legitimate undivided 1/3rd share in the suit property. It is the case of the plaintiff that though he had requested the defendants to partition the suit property and thereby to allot his undivided legitimate share in the suit property, but the defendants have refused to

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partition the suit property and to give the legitimate share to the plaintiffs in the suit property. Hence the plaintiff was constrained to file the present suit. In the case on hand the plaintiff has stepped into the witness box and deposed on oath that before filing of this suit the plaintiff had requested the defendants to partition the suit property and to allot his undivided 1/3rd share in the suit property for which the defendants had refused. The said testimony of the plaintiff was not denied by the defendants. Non-denial on the part of the defendants amounts to admission. Such being the case I do not find any reasons to disbelieve the said testimony of the plaintiff. Accordingly, I conclude that the plaintiff has successfully proved that in spite of the requests made by him to allot his share in the suit property, the defendants have not allotted the legitimate share of the plaintiff in the suit property. Accordingly **Issue No.2 is answered in the Affirmative.**

17. ISSUE NO.3: The present issue was framed regarding entitlement of the plaintiff to get the reliefs as sought for in this suit. In this suit the plaintiff has sought for the relief of partition and separate possession of his undivided 1/3rd share in the suit property.

18. The plaintiff has filed this suit by claiming himself to be the co-owner of the suit property. On the other hand, the defendants No.2 and 3 have contested the suit by contending that after the

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death of husband of the defendant No.2 namely Mr.Kiran Kumar, the suit property was orally partitioned in between the plaintiff and the defendants, in which an extent of 1 acre of land in the suit property was allotted to the share of the defendants No.2 and 3 and an extent of 37 guntas of land in the suit property was allotted to the share of the plaintiff herein. Therefore, the defendants No.2 and 3 had contended that in view of the earlier oral partition, the present suit for partition is not maintainable.

19. It is significant to note here that though the defendants No.2 and 3 have set up the plea of prior partition in their written statement, but the defendants No.2 and 3 have not produced any evidence before this court to prove the same. Even the defendants No.2 and 3 have also did not lead their evidence on oath reiterating the said contention. The defendants No.2 and 3 have did not offer themselves to be cross examined by the counsel for the plaintiff to test the veracity of the defence taken up by them in their written statement. Such being the case no credence can be given to the defence of prior partition so set up by the defendants No.2 and 3 in their written statement. Therefore, the defence of prior partition so set up by the defendants No.2 and 3 in their written statement has remained as merely a self-serving statement without any legs to stand. Such being the case, without there being any positive and cogent evidence in that regard, this court is not inclined to believe the

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bald contention taken by the defendants No.2 and 3 in their written statement. This view of this court gets support from the decision reported in **AIR 1999 SC 1441 in the case of Vidhyadhar Vs. Mankikrao and another** wherein, it is held as follows:

“Where a party to the suit does not appear into the 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 setup by him is not correct”.

20. On the other hand, as held in Issue No.1, the plaintiff has successfully proved that the suit property is a property of his father namely the deceased defendant No.1. Admittedly the defendant No.1 Mr.K.R.Devanath has died intestate. Admittedly the plaintiff and the defendants herein are the only surviving class-I legal heirs and successors of deceased defendant No.1 namely Mr. K.R.Devanath. Admittedly the plaintiff and the defendants are Hindus by religion. Hence for the purpose of inheritance and succession they are governed by Hindu Succession Act-1956. The suit property being the absolute property of father of the plaintiff namely the deceased defendant No.1 Mr.K.R.Devanath, the same has to be divided amongst the plaintiff and the defendants as per Section 8 to 10 of the Hindu Succession Act.

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21. The suit property being the property of deceased defendant No.1 namely Mr. K.R.Devanath and the plaintiff and the defendants being his only surviving class-I legal heirs, the suit property has to be divided into 3 equal shares. The plaintiff being the son of deceased defendant No.1 namely Mr. K.R.Devanath, the plaintiff is entitled for 1/3rd share in the suit property with metes and bounds. Similarly, the defendant No.1(a) being the wife of deceased defendant No.1 namely Mr. K.R.Devanath, the defendant No.1(a) is entitled for 1/3rd share in the suit property with metes and bounds. Further, the defendant No.3 being a son and the defendant No.2 being a wife of deceased son of deceased defendant No.1 namely Mr. Kiran Kumar, the defendants No.2 and 3 are together entitled for 1/3rd share in the suit property with metes and bounds. Accordingly I conclude that the plaintiff and the defendant No.1(a) are entitled for 1/3rd share each in the suit property with metes and bounds and the defendants No.2 and 3 are together entitled for 1/3rd share in the suit property with metes and bounds.

22. Further, the plaintiff has also sought for the relief of mesne profits. In this suit the plaintiff has not led any evidence on mesne profits. So also the plaintiff has not stated the quantum of mesne profits which he is entitled for. Therefore it is not possible to fix the quantum of mesne profits in this suit. Therefore, there shall be an enquiry regarding mesne profits in the Final Decree

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Proceedings as contemplated under Order 20 of C.P.C.
Accordingly, for what has been discussed above, **I answer Issue No.3 in the Partly Affirmative.**

23. ISSUE NO.4: In view of my above discussions and findings on Issues No.1 to 3, I proceed to pass the following:

ORDER

The suit of the plaintiff is hereby decreed in part.

It is declared that the plaintiff and the defendant No.1(a) are entitled for 1/3rd share each in the suit property with metes and bounds.

It is declared that the defendants No.2 and 3 are together entitled for 1/3rd share in the suit property with metes and bounds.

The defendants shall pay the court fees on their respective shares.

The claim of the plaintiff for mesne profits will be considered by holding an enquiry in the Final Decree Proceedings.

Pending interim applications if any, the same are disposed off accordingly.

Considering the relationship between the parties, there is no order as to costs.

Draw preliminary decree accordingly.

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After the lapse of appeal period, the office is hereby directed to register the Final Decree Proceedings by arraying the plaintiff as petitioner and the defendants as respondents and put up the file before this court.

(Dictated to the Typist directly on computer, typed by her, and the transcript revised and corrected by me and then pronounced in the open court on this **2nd day of April 2026**)

(SMT.ASRINA)
I ADDL. CIVIL JUDGE & JMFC.,
KRISHNARAJANAGAR.

**ANNEXURE**

<u>List of Witnesses examined on behalf of the plaintiff</u> PW-1: Sri.Arun Kumar S/o K.R.Devanath
<u>List of Documents marked on behalf of the Plaintiff</u> Ex.P-1: Family Genealogy. Ex.P-2: RTC.
<u>List of Witnesses examined on behalf of the Defendants</u> -NIL-
<u>List of Documents marked on behalf of the Defendants</u> -NIL-

(SMT.ASRINA)
I ADDL. CIVIL JUDGE & JMFC.,
KRISHNARAJANAGAR.