

KAMS500000172021



**IN THE COURT OF SENIOR CIVIL JUDGE & JMFC,
NANJANGUD**

Present : **Sri. Kamalaksha D., B.A., LL.B.,**
Senior Civil Judge & J.M.F.C.,
Nanjangud.

Dated this the 2nd day of May 2026

O.S./10/2021

Plaintiff

Mahadevamma W/o Chandrappa,
aged about 50 years,
residing at Varuna Village
and Hobli,
Mysuru Taluk and District.

(By Sri.M.Ramaswamy, Adv.)

-V/s-

Defendants

1. Mahadeva S/o late Madappa,
aged about 65 years,
residing at Hadinaru Village,
Chikkaiahnachathra Hobli,
Nanjangud Taluk,
Mysuru District.
2. Javanappa S/o late Nanjappa,
aged about 64 years,
residing at Hadinaru Village,
Chikkaiahnachathra Hobli,
Nanjangud Taluk,
Mysuru District.

3. Jayamma W/o Dyavanna
D/o late Nanjappa,
aged about 66 years,
residing at Siddaiahnundi,
Kasaba Hobli,
Nanjangud Taluk,
Mysuru District.

(By Sri. M.J.Sethu Rao, – Adv. for D.1
Sri. Ravikumar M. - Adv. for D.2 & 3)

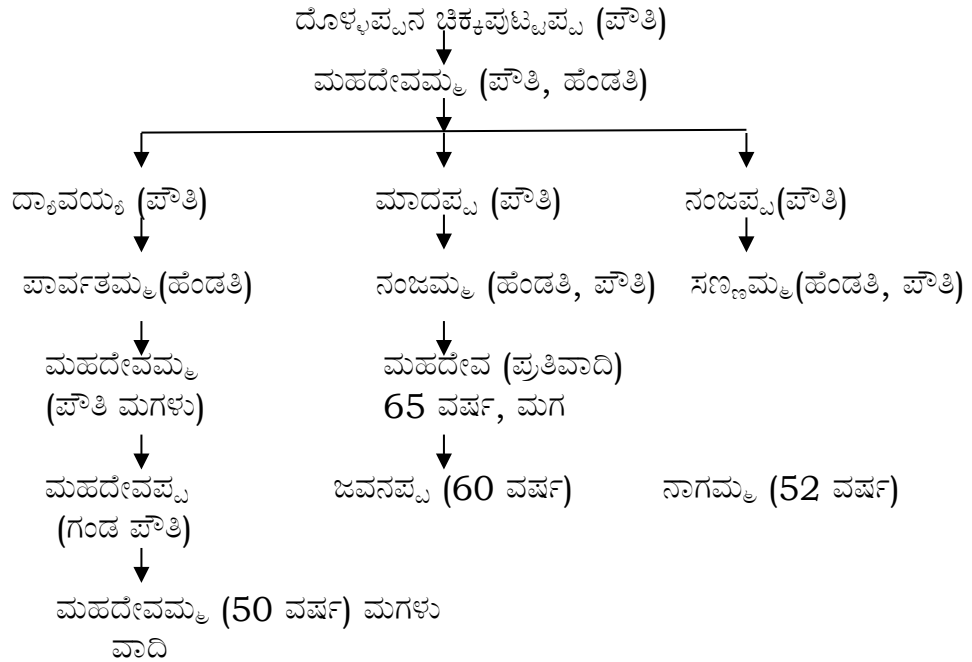
Date of institution of the suit	07.01.2021		
Nature of suit	Partition and separate possession		
Date of commencement of Trial	25.01.2023		
Date on which the judgment was pronounced	02.05.2026		
Duration of suit	Years	Months	Days
	05	03	26

J U D G M E N T

The plaintiff filed the suit for partition and separate possession of her half share in the suit schedule property bearing old Sy.No.288 new Sy.No.288/1 and 288/2 measures 4 acre 1 gunta out of 6 acres 1 gunta situated at Hadinaru Village of Nanjangud Taluk.

2. Brief facts of the case of the plaintiff are as follows:-

The plaintiff and defendants are the grand children of late Dollappana Chikkaputtappa. Late Dollappana Chikkaputtappa had 3 children. The first son Dyavaiah is the grandfather of the plaintiff, 2nd son late Madappa is the father of the defendant No.1 and 3rd son late Nanjappa is the paternal uncle of defendant. The family pedigree annexed with the plaint runs as below:



It is further submitted that, the suit schedule property is the ancestral and joint family property means the property of great grandfather of plaintiff by name Dollappana

Chikkaputtappa. During the lifetime of Dollappana Chikkaputtappa, he was cultivating the schedule property with the assistance of his first son Dyavaiah and second son Madappa. The third son Nanjappa already left the joint family and he has been residing separately along with his wife and children. 2 acres of land towards southern side of the property out of 6 acres 1 gunta was separately given to Nanjappa, thereafter 2 acre $\frac{1}{2}$ gunta out of 4 acre 1 gunta was given to elder son late Dyavaiah through oral partition. Later Dollappana Chikkaputtappa residing with his elder son Dyavaiah and also second son late Madappa. Both are jointly residing and cultivating the property jointly. Thereafter great grandfather of the plaintiff Dollappana Chikkaputtappa died. Then the grand father of the plaintiff by name Dyavaiah left the joint family and started to live outside of his village for the job purpose and told his brother Madappa to cultivate the schedule property and give share in the crops. So, the suit schedule property was not divided among the sons of Dollappana Chikkaputtappa. Thereafter late Madappa purchased the share of his younger brother

late Nanjappa through sale deed dated 03.06.1961 and continued the cultivation. Thereafter the grandfather of the plaintiff Dyavaiah died. The mother of the plaintiff by name Mahadevamma was the only legal heir and the grandfather of the plaintiff had no other male issues.

It is further submitted that, the mother of the plaintiff by name Mahadevamma met the father of the defendant No.1 and requested to make partition of the suit schedule property, the father of the defendant convinced the mother of the plaintiff that he will give share after some time. On the trust of assurance, the mother of the plaintiff did not pressurize for partition of the schedule property. The father of the defendant No.1 postponed to make partition of the schedule property by one or other reason. Subsequently the father of the defendant died and mother of the plaintiff also died. After the death of the father of the defendant No.1, the defendant No.1 got changed the khatha of the suit schedule property to his name without the consent and notice of the plaintiff. Then recently the plaintiff met the defendant No.1

and requested to make partition saying that she is having half share in the suit schedule property, for which the defendant roughly answered saying that if she need to get share she shall go to court for decree. Hence, the plaintiff without any other option has filed this suit.

3. In pursuance of service of summons defendant No.1 appeared appeared before the court through his counsel and filed written statement. The defendants No.2 and 3 though appeared before the court have not filed written statement.

4. In the written statement the defendant No.1 has denied the averments and claim of the plaintiff saying that the plaintiff has filed false suit only to harass him, because the plaintiff is not the member of joint family system. The defendant No.1 further explained that, Madappa, Nanjappa and Dyavaiah are the children of Dollappana Chikkaputtappa, but Dollappana Chikkaputtappa had no son by name Dollappa. The defendant No.1 has denied that Parvathamma is the wife of Dyavaiah and

Mahadevamma was the daughter and another Mahadevamma is the grand daughter of Dyavaiah. The defendant has totally denied the relationship of the plaintiff. It is further explained that, the grand children of Chikkaputtappa i.e., children of Nanjappa i.e., Javanappa and Nagamma had filed O.S.208/2021 before this court and in that suit the present plaintiff was not made as party. The family sketch given by the plaintiffs in O.S.208/2021 shows that the son of Chikkaputtappa i.e., Dollappa and daughter-in-law Ningamma, both had no issues. Hence, the plaintiff cannot be treated as joint family member and she is not having any right over the suit schedule property. Hence, prays to dismiss the suit.

5. Based on the above pleadings the following issues have been framed:

- 1 Whether the plaintiff proves that the suit schedule property is the joint family property as alleged ?
- 2 Whether the plaintiff proves that the plaintiff and the defendant are in joint possession and enjoyment of the suit schedule property?

- 3 Whether the plaintiff proves that she is the grand daughter of Dyavaiah?
- 4 Whether the plaintiff is entitled for partition of suit schedule property?
- 5 Whether the plaintiff is entitled for half share in the suit schedule property?
- 6 What order or decree?

6. In order to get the relief, the plaintiff is examined as P.W.1 and got marked 10 documents as Exs.P.1 to P.10. On the other hand, the defendant No.1 is examined as D.W.1 and got marked five documents as Exs.D.1 to D.5.

7. Heard and perused the pleadings, evidence and materials placed on record.

8. The answer to the above issues is as follows:

Issues No.1 & 2	:	In the negative
Issue No.3	:	In the negative
Issues No.4 & 5	:	In the negative
Issue No.6	:	As per final order for the following

REASONS

9. **Issue No.3:** At the outset, I would like to take issue No.3 for discussion, because the defendants have strongly opposed the relationship of the plaintiff saying that she is not the joint family member. The plaintiff has come up before the court for partition of the suit schedule property by claiming half share in it. The claim of the plaintiff that, she is the grand daughter of Dyavaiah. The plaintiff has produced total 10 documents. Ex.P.1 is the certified copy of handwritten R.T.C. of Sy.No.288/2 standing in the name Madappa S/o Chikkaputtappa; Ex.P.2 is the another identical document of same survey number standing in the name of of Mahadeva S/o late Madappa; Ex.P.3 is the certified copy of mutation extract; Ex.P.4 is the registered sale deed dated 03.06.1961. The said sale deed is produced by the plaintiff to show that the father of the defendant by name Madappa purchased the property on the said date. Ex.P.5 is the genealogical sketch prepared as per the information given by the plaintiff. Exs.P.6 and 7 are the computerized R.T.Cs. of

Sy.No.288/1 and 288/2, the said documents standing in the name of Mahadeva S/o late Madappa. Exs.P.8 to 10 are the death certificates of Dyavaiah, Parvathamma and Mahadevamma. The trustworthiness of P.W.1 is questioned in the cross-examination. It is asked to P.W.1 that what types of document is produced by her to prove that she is the grand daughter of Dyavaiah, for which P.W.1 in the cross-examination deposed as below:

ನಾನು ನನ್ನ ಮುಖ್ಯ ವಿಚಾರಣೆ ಪ್ರಮಾಣ ಪತ್ರದಲ್ಲಿ ನನ್ನ ತಾತ ಮತ್ತಾತ ಯಾರು ಎಂದು ವಿವರಿಸಿದ್ದೇನೆ ಮತ್ತು ಆ ಕುರಿತಂತೆ ನಿ ಪಿ 5 ಅನ್ನು ಹಾಜರು ಮಾಡಿದ್ದೇನೆ ಎನ್ನುವುದು ಸರಿ. ದ್ಯಾವಯ್ಯ ನನ್ನ ತಾತ ಎಂದು ತೋರಿಸಲು ಪ್ರಮಾಣಪತ್ರದ ವಿವರಣೆ ಹೊರತುಪಡಿಸಿ ಬೇರೇ ದಾಖಲೆ ಇಲ್ಲ. ನನ್ನ ತಂದೆ ಹೆಸರು ಮಹದೇವಪ್ಪ ಮತ್ತುತಾಯಿ ಹೆಸರು ಮಹದೇವಮ್ಮ. ನನ್ನ ಮದುವೆ ಆಗಿ ಸುಮಾರು 30-35 ವರ್ಷ ಆಗಿದೆ.

10. So, P.W.1 in the cross-examination categorically admits that except Ex.P.5 genealogical sketch no other document has been produced by the attempt of the plaintiff to prove her relationship or to show that she is the grand daughter of Dyavaiah. Ex.P.5 is the family sketch prepared as per the information given by Mahadevamma who is none other than the plaintiff. The said family sketch

cannot be relied to prove the relationship, because Ex.P.5 was prepared as per information of the plaintiff only. The plaintiff could have produced genealogy tree issued by revenue authority, birth certificate and other common residential address documents to prove that she is the member of joint family or especially she is the grand daughter of Dyavaiah. Production of documents like voter's identity card, ration card, electricity bill etc., may be treated as ancillary documents to prove the jointness of the plaintiff over the suit schedule property and she is the grand daughter of Dyavaiah. Only oral testimony of the plaintiff herself is not enough to prove the relationship. The plaintiff could have chance to tender evidence of neighbours, relatives or elders confirming her relationship with late Dyavaiah. The burden of proof of relationship of membership of joint family is always on the plaintiff, because normally and generally the plaintiff will come to court for the relief of partition and separate possession, in which the plaintiff must prove his or her relationship with defendants. Onus of nucleus may be shifted if the joint

family membership is successfully proved by the plaintiff. But in the present matter the plaintiff has not proved that she is the grand daughter of Dyavaiah, because the defendants have taken defence that Dollappana Chikkaputtappa had three sons by name Madappa, Nanjappa and Dollappa. Dollappana Chikkaputtappa had no son by name Dollappa. The learned counsel for the plaintiff would argue that the first son Dyavaiah S/o Dollappana Chikkaputtappa died without leaving any male issues. The mother of the plaintiff is the only legal heir of Dyavaiah. After the death of Dollappana Chikkaputtappa, the mother of the plaintiff met the father of the defendant No.1 by name Madappa and requested for partition of the suit schedule property. First of all the plaintiff has utterly failed to prove her relationship with Dyavaiah. Hence, in the absence of proof, it is not proper to treat the plaintiff as the family member of Dyavaiah.

11. The 1st defendant examined himself as D.W.1, but he did not appear for cross-examination. A reference seen

in the order sheet dated 11.02.2026 and 03.03.2026, inspite of sufficient time given by this court for appearance he did not appear. Hence, his cross-examination is taken as not appeared. D.W.1 has got marked five documents. Exs.P.1 to 4 are the certified copies of the plaint, written statement, issues and chief-examination of P.W.1 in O.S.208/2021. The learned counsel for the defendants argued that, the suit was filed by Javanappa and Jayamma against Mahadeva who is the 1st defendant herein. The plaintiff of this suit was not party in O.S.208/2021. It is interest to say that Javanappa and Jayamma have filed O.S.208/2021 for partition and separate possession against Mahadeva, the present plaintiff was not party in that suit. The present defendants No.2 and 3 had filed that suit against the present defendant No.1. So, it shows that same parties by changing their rank in different suits have asked for partition and then denied in different suits. The present attitude of the parties has to be cancelled. As aforesaid Mahadevamma was not a party in O.S.208/2021 which was filed for the relief of partition and separate

possession. The truth would be come out if D.W.1 appears for cross-examination, but he did not appear before the court for the reason best known to him. However, in conclusion to issue No.3, it may be said that the plaintiff has failed to discharge her burden to prove that she is the grand daughter of Dyavaiah. Hence, **issue No.3** is answered **in the negative**.

12. **Issues No.1 and 2:** These issues are taken together for discussion. The first issue puts burden upon the plaintiff to prove that the schedule property is the joint family property as alleged. Issue No.3 is answered against the plaintiff saying that the plaintiff has utterly failed to prove her relationship with Dyavaiah, because though the plaintiff claims to be the grant daughter of Dyavaiah; but the plaintiff has failed to prove the said relationship with clear proof of evidence. When the joint membership of the plaintiff is not proved, then she cannot be treated as member of joint family property and such property cannot be treated as joint family property in the possession of the

plaintiff and defendants. The possession of the plaintiff over the schedule property has to be disbelieved. Hence, **issues No.2 and 3** are answered **in the negative**.

13. **Issues No.4 & 5** : These issues are also taken together for consideration. The plaintiff filed the suit for half share in the suit schedule property, but her joint family membership with Dyavaiah is not proved. Therefore, the plaintiff is not entitled to get any share whatsoever claimed in the plaint. Hence, **issues No.4 and 5** are answered **in the negative**.

14. **Issue No.6:** In view of findings on above issues, this Court proceeds to pass the following:-

ORDER

Suit of the plaintiff is dismissed.

No order as to costs.

Draw decree accordingly.

(Dictated to the Stenographer, transcribed by her on computer, revised, corrected and then pronounced by me in open Court on this the 2nd day of May 2026)

(Kamalaksha D.)

Senior Civil Judge, Nanjangud.

ANNEXURE

List of witnesses examined for the plaintiff :-

P.W.1 - Mahadevamma

List of documents marked for the plaintiff :-

Exs.P.1 & 2- Certified copies of handwritten R.T.Cs.
Ex.P.3 - Certified copy of M.R.extract
Ex.P.4 - Sale deed dated 03.06.1961
Ex.P.5 - Genealogy sketch
Exs.P.6 & 7- Computerized R.T.Cs.
Ex.P.8 - Death certificate of Dyavaiah
Ex.P.9 - Death certificate of Parvathamma
Ex.P.10 - Death certificate of Mahadevamma

List of witnesses examined for the Defendants :-

D.W.1 - Mahadeva

List of documents marked for the Defendants:-

Exs.D.1 to 4- Certified copies of plaint, written
statement, issues and chief-
examination of P.W.1 in O.S.208/2021
Ex.D.5 - Certified copy of genealogy sketch

**Senior Civil Judge,
Nanjangud.**