

KAMS500001462023



**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 1st day of July 2026

O.S./52/2023

Plaintiff

Gowramma W/o
K.Mahadevaswamy,
D/o late K.Basappa,
aged about 53 years,
residing at Gattavadi Village,
Doddakowlande Hobli,
Nanjangud Taluk.

(By Sri. B.Nanjundaswamy, Adv.)

-V/s-

Defendants

1. Shivamma W/o late K.Basappa,
aged about 84 years,
2. Rathnamma W/o late B.Madappa,
aged about 56 years,
3. Geetha D.M. D/o late B.Madappa,
W/o Mahadevaswamy,
School Master (son of Gadimallappa)

aged about 37 years,
Harave Village and Hobli,
Chamarajanagar Taluk and District.

4. C.M.Satheesha S/o late Madappa,
aged about 35 years,
5. Nanjammanni D/o K.Basappa,
W/o Guruswamappa,
aged about 61 years,
6. B.Nanjappa S/o late K.Basappa,
aged about 58 years,
7. Neelamma W/o B.Nanjappa,
aged about 50 years,

defendants No.1, 2, 4 to 7 are
residing at Chunchanahalli Village
and Post, Kowlande Hobli,
Nanjangud Taluk.

8. Nagesh Kumar N. S/o Nagaraju,
residing at Chunchanahalli Village
and Post, Kowlande Hobli,
Nanjangud Taluk.

Presently residing at
House No.2, 5th Cross,
K.V.Lane, Behind Radhakrishna
Lodge, Cottonpete, Chikpete,
Bengaluru City.

(By Smt. Noor Ayesha – Adv. for D.1 & 5
Sri. D.Jagadeesh – Adv. for D.2 to 4, 6 & 7
Sri. B.Yogeesh – Adv. for D.8)

Date of institution of the suit	14.02.2023		
Nature of suit	Partition and separate possession		
Date of commencement of Trial	27.11.2024		
Date on which the judgment was pronounced	01.07.2026		
Duration of suit	Years	Months	Days
	03	04	18

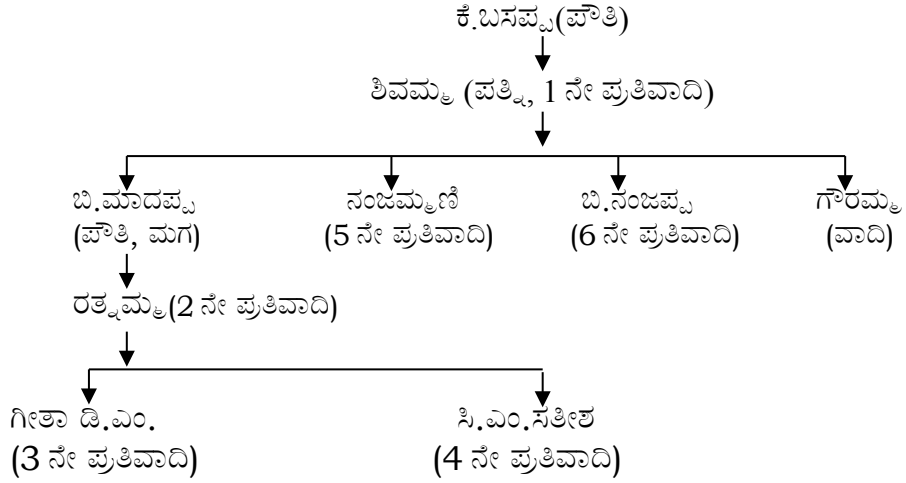
J U D G M E N T

The plaintiff filed the suit for partition and separate possession of her 1/5th share in the suit schedule properties coupled with mesne profits.

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

The plaintiff and defendants are the members of the joint family. Similarly the suit schedule properties are also undivided family properties. Madappa, Nanjammanni, Nanjappa and Gowramma are the four children of late K.Basappa and 1st defendant, among them first son by name B.Madappa demised prior to suit. The 2nd defendant is his

wife and defendants No.3 and 4 are his children. The plaintiff and defendants No.5 and 6 are the legal heirs of K.Basappa. It is further submitted that, the plaintiff is the daughter of K.Basappa and Shivamma. The 1st defendant is the widow wife of K.Basappa. The family pedigree annexed with the plaint runs as below:



It is further submitted that, the plaintiffs and defendants have been cultivating the suit schedule properties together as joint family members and they are used to divide the income of the crops of the schedule properties. The plaintiffs and defendants are the members of undivided joint family and both of them are having equal property right upon the suit schedule properties. Initially the plaintiffs and defendants were living happily and their

cordial relationship was continued for many years. Recently the defendants started vengeance against the plaintiffs and denied to give any share in the schedule properties.

It is further submitted that, defendants No.2 to 4 recently sold property of Sy.No.414/2 measures 1 acre 30 guntas in favour of the 8th defendant by name Nagesh Kumar S/o Nagaraju through registered sale deed dated 29.08.2017 and the said sale deed pertaining to item No.5 is unaware to the knowledge of the plaintiffs. Similarly the 6th defendant sold the property of Sy.No.417/2 measures 1 acre 28 guntas in favour of the 7th defendant. Recently the plaintiffs perused and verified the R.T.Cs. and revenue documents of the suit schedule properties and it has come to their knowledge that the defendants No.2 to 4 sold out two properties beyond the knowledge of the plaintiffs and the said sale deed is not binding to them. The plaintiffs made request for partition and separate possession of the suit schedule properties, but the defendants neglected the demand of partition. Therefore, the plaintiffs conveyed

panchayath or negotiation by the intervention of the elders. The elders instructed and advised the defendants for partition, but they did not give share. Hence, this suit.

3. Summons were duly served, defendants appeared before the court and filed separate written statement. The defendants No.2 to 4, 6 and 7 filed written statement by denying the entire averments of the plaint. They further submitted that, during the lifetime of K.Basappa, properties have already been divided between his two sons i.e., husband of the 2nd defendant and 6th defendant through a registered partition deed dated 04.10.2022. The very document has been duly registered before the Sub-Registrar Office, Nanjangud. In the said partition Basappa retained the land bearing Sy.No.186/2 measures 1 acre 18 guntas and Sy.No.185/4 measures 2 guntas in total 1 acre 20 guntas for his lifetime maintenance. It is agreed that after the demise of K.Basappa, his elder son i.e., Madappa acquired all the incidental rights over the same after the death rituals of K.Basappa and his wife. In the very

registered partition the land bearing Sy.No.40/1 measures 1 acre 33 guntas and Sy.No.397 measures 2 acre $\frac{1}{2}$ guntas out of 4 guntas and land bearing Sy.No.414/2 measures 30 guntas along with a house property and the site property have been fallen to the share of the elder son of K.Basappa by name Madappa. Likewise the land bearing Sy.No.39 measures 4 acre 5 guntas and land bearing Sy.No.417/2 measures 1 acre 28 guntas, land bearing Sy.No.32/7A/B measures 5 guntas, house property and site property have been fallen to the share of younger son of K.Basappa who is the 6th defendant herein.

It is further submitted that after the partition the respective share holders of the properties have become the owners of the properties of their share by getting mutated all the revenue documents in the name and favour and they are regularly payment tax of shares given in the partition deed. Hence, these defendants taken defence to dismiss the suit by virtue of registered partition deed.

4. Defendants No.1 and 5 filed separate written statement and they joined their hands with the plaintiffs to make partition of the suit schedule properties saying that they could not deny the relief, because the family properties were not divided till the death of Basappa and even the defendants denied to make partition. Hence, the defendants No.1 and 5 prayed for proper order.

5. The 8th defendant also filed separate written statement. He denied the pleadings of the plaint and has taken defence that the plaintiff and 1st defendant have taken their share in the suit schedule properties. Apart from that, they were given gold, silver and other ornaments and the father of the plaintiffs meet expenditure of their marriage. The 8th defendant is the bonafide purchaser of the property of item No.5, because he purchased the said property after due verification. So, the contested 8th defendant prays to pass necessary equitable partition order saying that suppose the court comes to a conclusion that the suit is to be decreed then make an arrangement to give

the purchased property of items No.1 and 5 in favour of the defendants and further order to make absolute the sale deed of 8th defendant. Therefore, the 8th defendant prays to pass equitable order.

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

- 1 Whether the plaintiff proves that suit schedule properties are joint family properties?
- 2 Whether the plaintiff further proves that sale deed dated 29.08.2017 is not binding on her share?
- 3 Whether the defendant No.8 proves that he is the bonafide purchaser of suit item No.5 through registered sale deed dated 29.08.2017 by one Madappa?
- 4 Whether the plaintiff is entitled to get reliefs as sought in the plaint?
- 5 What order or decree?

Addl. Issue:

Whether the defendants prove that the plaintiff cannot demand for partition because of division of family properties was effected by way of registered partition deed dated 04.10.2002?

7. In order to get the relief, the plaintiff is examined as P.W.1 and got marked 18 documents as Exs.P.1 to P.18. On the other hand, the defendants No.8 and 6 are examined as D.Ws.1 and 2 and got marked 4 documents as Exs.D.1 to 4.

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

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

Issue No.1	:	Partly in the affirmative
Issue No.2	:	In the affirmative
Issue No.3	:	In the negative
Issue No.4	:	Partly in the affirmative
Addl. Issue	:	In the negative
Issue No.5	:	As per final order for the following

REASONS

10. **Issue No.1 & Addl. Issue** : These two issues are taken together for discussion to avoid repetition. The first issue puts burden upon the plaintiff to prove that the schedule properties are ancestral and joint family

properties, whereas the additional issue puts burden upon the defendants to prove that the plaintiff's suit is not maintainable because of registration of partition deed dated 04.10.2002. The suit is filed for partition and separate possession. The contested defendants especially defendants No.2 to 4 have taken defence that the schedule properties means family properties were divided through a registered partition deed dated 04.10.2002. The very document has been duly registered before the Sub-Registrar in Nanjangud. P.W.1 has filed chief-examination affidavit and her trustworthy is questioned in the cross-examination. The suggestion question asked to P.W.1 that, the father of the plaintiff and defendants during his lifetime partitioned the schedule properties through registered partition deed executed in the year 2002. D.W.2 in the cross-examination has repeated the same defence saying that the family properties were divided through a registered partition deed dated 04.10.2002. The specific defence of the contested defendants that amount was given to the plaintiffs during their marriage time and the said payment

of amount was considered as share in the schedule properties. However, D.W.1 does not know about the quantum of properties given to the married plaintiffs in their marriage.

11. It may be said that, the right to property as a coparcener/sharer is different from payment of amount in the marriage or maintenance. There can be a right to claim maintenance without there being a right in the property. In the present matter the contested defendants have taken contention that the plaintiffs are given amount instead of share in the suit schedule properties. P.W.1 has produced total 18 documents. Ex.P.1 is the family sketch, there is no dispute between the parties about their relationship each other. Ex.P.2 is the notice issued by the plaintiff demanding partition. The perusal of Exs.P.12 to 18 is required, because other documents are not property documents to know the nature of the schedule properties. Exs.P.12 to 18 are the R.T.Cs. of different properties shown in the schedule. Ex.P.12 is the R.T.C. of item No.1;

Ex.P.13 is the R.T.C. of item No.2; Ex.P.14 is the R.T.C. of item No.3; Ex.P.15 is the R.T.C. of item No.4; Ex.P.16 is the R.T.C. of item No.5; Ex.P.17 is the R.T.C. of item No.6; Ex.P.18 is the R.T.C. of item No.7. The 10th column of each R.T.C. indicates the entry of the name of Basappa and others in column No.9 by virtue of "ವಿಭಾಗ" means partition. The plaintiffs have not furnished documents of item No.8.

12. The learned counsel for the defendants would argue that the suit of the plaintiffs is not at all maintainable, because of registered partition deed. Now the question arises that whether Ex.D.1 partition deed is binding to the plaintiff and suit of the plaintiff is not maintainable for the reason that the plaintiffs have not asked the relief for cancellation of partition deed. As admitted by D.W.1, the plaintiff is not the signatory or she has not put signatures on Ex.D.1 partition deed. Obviously the said document is not binding, because of her absence of signatures, it means to say that the father of the defendants and themselves partitioned the suit

schedule properties by excluding the female coparceners. At this juncture, I would like to refer the judgment of the Hon'ble High Court of Karnataka decided in **R.S.A.No.1621/2017** in the case of **Smt.Shanthamma Vs. Smt.Jayamma and others**. In that matter the Hon'ble High Court of Karnataka has held that, *“In the case on hand also, though not sought for any cancellation of the said partition deed, the material emerged during the trial is very clear that the plaintiff was an illiterate and undue advantage was taken and promised her to pay the money, but money was not paid. No consideration has been passed. No material is placed for having paid the amount in favour of the plaintiff except disclosing in the deed.”*

So, the Hon'ble High Court of Karnataka held that the plaintiff in that matter need not require to ask prayer for cancellation of partition deed. In the present matter, though the defendants have divided their properties, but they have excluded the female coparceners and they have not informed the female coparceners about the registration

of the partition deed. As mentioned above, subsequent money was paid to the female coparceners in their marriage that cannot be treated as their legitimate shares in the schedule properties, because the property right is created by statute that cannot be extinguished easily. So, I would like to say that Ex.D.1 document of registered partition deed cannot be applied and not binding upon the plaintiffs.

13. Another contention raised by the contested defendants that, the family properties were previously divided through their redeemed partition deed registered in the year of 2002. Section 6 of Hindu Succession Act, which was amended in the year 2005 conferring the status of a coparcener to a daughter of a male Hindu entertains few exceptions. Alienation of properties before 20th December 2004 is an exception to Section 6(1) of the Act. If the coparcenary properties are alienated before the said cut off date, then the daughter who is given the status of a coparcener cannot claim a share in the alienated

properties. The alienation referred to in the proviso to Section 6(1) of the Act has to be necessarily the alienation that is lawful. Admittedly, as on the date of the execution of the partition deed dated 04.10.2002 there was a prohibitory order to challenge the alienation of the property including Ex.D.1 partition deed.

14. However, it is to be noted that, State of Karnataka has enacted to Hindu Succession Act prior to Central amendment. Now the question arises that which was the law prevailing prior to 20.12.2004 (before coming to force of Hindu Succession (Amendment) Act, 2005) governing the coparcenary property of Joint Hindu Family governed by Mitakshara law in the State of Karnataka. The Hon'ble Apex Court in the case of **Prakash Vs. Phulawati** reported in **(2016) 2 SCC 36** has held that, "as per Law applicable" prior to 20.12.2004, if any disposition or alienation including partitions which may have taken place, then they are protected under the provision to Section 6(1) of Hindu Succession (Amendment) Act, 2005. Even in **Vineeta**

Sharma Vs. Rakesh Sharma and others also the Hon'ble Supreme Court also repeated the same principle of law saying that if any alienation was made prior to cut off date i.e., 20.12.2004 has to be protected and disgruntled party cannot challenge it. Now the question arises that “which law was in force before 20.12.2004 in a joint family governed by Mitakshara Law to the Karnataka State? Because State of Karnataka had amended the Hindu Succession Act in the year 1990 popularly known as Karnataka Amendment. Now also some more questions arise that what is the effect of division of ancestral properties made among the male coparceners without the knowledge and consent of the daughter coparcener and who has not signed the said deed of partition? Whether these types of act done by these male coparceners in contravention with Section 6A to 6C of Hindu Succession (Karnataka Amendment) Act, 1990 are protected under proviso to Section 6(1) of Hindu Succession (Karnataka Amendment) Act, 2005.

15. The Hon'ble Division Bench of Karnataka High Court in the case of **Padmavathi and another Vs. Smt.Jayamma and others** held that, *the amendment to Hindu Succession (Amendment) Act, 2005 is prospective in nature from 09.09.2005 and prior to 09.09.2005 going back to 30.07.1994 was occupied by the Karnataka Amendment Act, 1990 and the same has not been repealed by the Karnataka Legislature, but having only been eclipsed by the Central Amendment Act, 2005 from 09.09.2005.* The Hon'ble High Court further held that *from 30.07.1994 to 08.09.2005, the Hindu Succession (Karnataka Amendment) Act, 1990 is applicable.*

16. When the coparcenary rights and liabilities of daughters are governed by Hindu Succession (Karnataka Amendment) Act, 1990 from 30.07.1994 till 09.09.2005 i.e., till coming into force of the Hindu Succession (Amendment) Act, 2005, then the undivided Joint Hindu Family members governed by Mitakshara Law had to follow the Hindu Succession (Karnataka Amendment) Act, 1990

for disposition or alienation including any partition or testamentary disposition of ancestral property. The Hon'ble Apex Court in the case of **Prakash Vs. Phulavathi** reported in **(2016) 2 SCC 36** has held that 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. The said principle of law was also once more discussed in Vineetha Sharma's case. The Hon'ble High Court of Karnataka in the case of **P.S.Sairam and another Vs. P.S.Rama Rao Pisey and others** reported in **ILR 2001 Kar 2209** has held that, *"a reading of clause (1) with clause(b) really indicates that Section 6A of Karnataka Amendment Act, 1990 will apply to the cases where the joint family exists and there has been no severance of the joint family by partition in the eye of law. Clause (b) indicates that if a partition takes place in the joint family after coming into force of this amending Act, then in that partition of the Joint Hindu Family taking place after the commencement of this Act, the property shall be so divided as to allot a share to the daughter the same share as is*

eligible to a son. So, meaning thereby that if partition has already been effected actually or in the eye of law before coming into force of Karnataka Act No.23 of 1994 it will not be affected by clause (b) of Section 6A.”

17. In the light of the above ratio laid down by the Hon'ble Apex Court of India in Prakash Vs. Phulavathi, Vineeta Sharma Vs. Rakesh Sharma and others and the Hon'ble High Court of Karnataka in P.S.Sairam and another Vs. P.S.Rama Rao Pisey and others, it may be safely held that Ex.D.1 partition deed can be challenged by the effected plaintiff because the rights of the female coparcener was recognized by the Karnataka State in the year of 1990. One of the incidents of coparcenary ownership is, as a result of such coparcenary ownership, joint possession and enjoyment of the properties is common to all the coparceners including a daughter coparcener. Another incident of coparcenary ownership is, all the coparceners can at any time workout their right by asking for partition and this right can be exercised even by

a daughter coparcener. Till the time, the Hindu Succession (Amendment) Act, 2005 came into force, the Karnataka Amendment Act, 1990 was in force and if a partition had to be effected among the coparceners, then it should be effected between all the coparceners such as father, son and daughter, because Karnataka Amendment recognized a daughter or female as coparcener and even though the defendants and their father effected their registered partition deed in the year of 2002 the said partition deed is not at all applicable to the female coparcener/ plaintiff because of her signature in Ex.D.1 partition deed and Karnataka Amendment has recognized the daughter of undivided family as coparcener. So, in the present matter the defendants and their father have effected partition on 04.10.2002 by including the shares of plaintiff's coparcener, without her consent and signature in contraventions with the provisions of Karnataka Amendment Act 1990, then Ex.D.1 partition deed is not binding on the interest of the daughter even after coming into force of Hindu Succession (Amendment) Act, 2005.

Further the said Ex.D.1 partition entered by male coparceners, i.e., defendants and their father is not in accordance with law i.e., Section 6A and 6B of Hindu Succession (Karnataka Amendment) Act 1990. Hence, Ex.D.1 registered partition deed is not protected under Section 6(1) of Hindu Succession (Amendment) Act 2005. Further as per Karnataka Amendment Act, 1990, coparcenary right already vested with a daughter and the same cannot be taken away by her father or brothers by way of procedure not known to law. At this juncture, I would like to say that Ex.D.1 is not at all applicable to female coparcener means the plaintiff for the two reasons. Firstly the defendants and their father had not taken the signature of female coparcener (plaintiff) to Ex.D.1 document. Secondly the Karnataka Amendment Act 1990 has recognized daughter as coparcener. Hence, the defence of registered partition deed introduced by the contested defendants shall not be attached to decide the matter against the plaintiff.

18. It is pertinent to say that D.W.2 during the course of cross-examination has clearly admitted that,

"ಹೆಣ್ಣುಮಕ್ಕಳ ಹೆಸರನ್ನು ವಿಭಾಗ ಪತ್ರದಲ್ಲಿ ಬರೆಯಬೇಕು ಎಂಬ ವಿಷಯ ನನಗೆ ಗೊತ್ತಿಲ್ಲದ ಕಾರಣ ಬರೆಸಿಲ್ಲ. ವಿಭಾಗ ಪತ್ರದಲ್ಲಿ ಹೆಣ್ಣುಮಕ್ಕಳನ್ನು ಬಿಟ್ಟು ಬರೆಸಿರುವ ಕಾರಣ ಮತ್ತು ಅದು ಅವರಿಗೆ ಬದ್ಧಪಡಿಸುವುದಿಲ್ಲ ಎಂದರೆ ಸರಿಯಲ್ಲ. ನಿ.ಡಿ.1 ರ ವಿಭಾಗ ಪತ್ರಕ್ಕೂ ಮತ್ತು ವಿಭಾಗ ಪತ್ರಕ್ಕೂ ಯಾವುದೇ ಸಂಬಂಧ ಇಲ್ಲ ಎಂದರೆ ಸರಿಯಲ್ಲ. ಪಿತ್ರಾರ್ಜಿತ ಆಸ್ತಿಯಲ್ಲಿ ಹೆಣ್ಣುಮಕ್ಕಳಿಗೆ ಹಕ್ಕು ಇದೆ ಎಂದರೆ ಸರಿ."

So, nature of schedule properties of items No.1 to 7, relationship of the parties each other are proved fact. As aforesaid, Ex.P.1 partition deed shall not be made applicable to the plaintiff. Hence, the plaintiff has proved that items No.1 to 7 properties are undivided ancestral and joint family properties, whereas the evidence of the plaintiff is not at all enough to prove the nature of item No.8 property. Therefore, **issue No.1** is answered **partly in the affirmative** and **addl. issue in the negative**.

19. **Issues No.2 & 3:** These issues are taken together for common discussion. The second issue puts burden

upon the plaintiff to prove that the sale deed dated 29.08.2017 is not binding on her share. D.W.1 claims to be the purchaser of item No.5 property which is the property of Sy.No.414/2 measures 1 acre 30 guntas. The disputed sale deed has not been produced either by plaintiff or defendants. Ex.D.4 cannot be applicable on the plaintiff, because she is not party in the partition deed. Secondly the defendants have not taken consent of the plaintiff to sell the item No.5 property. A bonafide purchaser is a legal term for an innocent buyer who purchase the property for fair value genuinely believing the seller has the right to sell it and without any knowledge of the prior claims. In the present matter, the property purchased by Nagesh Kumar though paid consideration amount for purchase of item No.5 property, but his evidence does not prove that he has taken all necessary steps and caution prior to sale transaction and he purchased the property in good faith. The purchaser as well as buyer ought to have informed to the plaintiff of the sale transaction of item No.5 property. Mere purchase of

joint family property by the third party cannot protect his property, because a purchaser shall take every necessary steps before purchasing a property i.e., called “buyer be aware”. The burden to prove that the purchaser is “bonafide” lies entirely on buyer. Generally court required buyer to prove that, he acted with “few care and caution.” Therefore, even though D.W.1 has purchased item No.5 property, he has not proved that whether he has taken every precautionary steps subsequent to sale transaction. Therefore, unproduced sale deed is not applicable to the plaintiff, because she is a female coparcener of family of K.Basappa.

20. The learned counsel for the defendant No.8 argued that, P.W.1 in the cross-examination promptly admitted the earlier partition of the schedule property. According to the learned counsel for the defendant No.8, P.W.1 admits the partition of property of Sy.No.186/2 , but the said property is not the subject matter herein. Similarly P.W.1 also admits the division of property of

Sy.No.185/4 measures 2 guntas. But P.W.1 denies the said suggestion. Denial is not a corroborative evidence. The learned counsel for the defendant No.8 further argued that, all the properties of schedule are equally fertilized land and same crops are being grown in the properties. It is also admitted by P.W.1 that, one borewell was dug in the schedule property. However, this type of evidence is not proof of earlier partition. It is also argued by the learned counsel for defendant No.8 that, though the plaintiff/P.W.1 says that her father had equal and similar love and affection upon all his children, but P.W.1 herself did not attend in funeral function of her father. The said attitude shows the malafide intention of the plaintiff, because she did not attend in the funeral function of her father. It is also argued by the learned counsel for the defendant No.8 that the plaintiff has vindicated the earlier partition. Hence, the learned counsel for the 8th defendant trying to prove that the father of the plaintiff sold item No.5 property in favour of 8th defendant for bonafide reason i.e., to accumulate amount for marriage of his daughters. As

mentioned above, the 8th defendant failed to prove that he took sufficient care and caution prior to purchase the property. However, neither the plaintiff nor the defendants have furnished sale deed. The learned counsel for the defendant No.8 argued that, an equitable relief may be granted in favour of defendant No.8/purchaser by adjusting the share of seller and the sale deed can be made absolute in favour of the 8th defendant, that is internal fact between the seller and purchaser, because the contested defendant No.1 has also not asked such relief. The court cannot go beyond the pleading. Therefore, **issue No.2** is answered **in the affirmative** and **issue No.3 in the negative**.

21. **Issue No.4:** The plaintiff also prayed to grant mesne profits. “Mesne” is an old French word that meant “intermediate”. The underlying principle based on which the Code of Civil Procedure, 1908 functions is “Ubi Jus Ibi Remedium” that signifies “where there is a right, there is a remedy” The concept of Mesne Profits has been developed

from this principle because it is the law of nature to provide the right to compensation where there has been an infringement or breach of a legal right. When this claim arises, the law acts as a shield to protect the original owner of the property. Mesne Profits of property has been defined under Section 2 (12) of C.P.C., as those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits, but shall not include profits due to improvements made by the person in wrongful possession. The scope of Mesne Profits is very wide in its own circle. Until now it is clear that Mesne Profits are granted on property but are restricted only to those profits which are derived by a person in wrongful possession of property belonging to another. The possession of the defendant over the suit schedule properties shall not be termed as unlawful possession, because he is also family member of the plaintiffs. The defendant is not stranger to the family of the plaintiffs. Therefore, his possession over the suit schedule properties

cannot be called as unlawful or illegal possession. The question of grant of mesne profits arises only when possession of the one person is defined illegal or unlawful possession. As discussed above, the possession of the defendant in the suit schedule properties is not illegal or unlawful. Hence, the plaintiff is not entitled to get mesne profits.

22. In view of discussion on issues No.1 to 3 and addl. Issue, it may be said that the contested defendant No.1 the brother of the plaintiff categorically admits the relationship with each other and nature of the schedule properties. Moreover, the nature of the schedule properties of items No.1 to 7 proved as undivided family properties. The status of the plaintiff is also proved as female coparcener. Ex.D.1 or Ex.D.4 document definitely not applicable and that shall not be applicable to the female coparcener (plaintiff). B.Madappa, Nanjammanni, B.Nanjappa, Gowramma are the children of late K.Basappa and Shivamma. The 1st defendant is the widow wife of

K.Basappa. The widow is class-I heir as per Hindu Succession Act. Therefore, the 1st defendant is also entitled to get share. The suit schedule properties of items No.1 to 7 are to be divided into five parts and plaintiff and defendants are entitled to get equal share in it. Plaintiff, defendants No.1, 5 and 6 are entitled to get 1/5th share each and defendants No.2 to 4 together entitled for 1/5th share in items No.1 to 7 schedule properties. Item No.8 is no proved as joint family properties, hence it is excluded from division. Hence, **issue No.4** is answered **partly in the affirmative**.

23. **Issue No.5:** In view of findings on above issues, this Court proceeds to pass the following:-

ORDER

Suit of the plaintiff is partly decreed with cost. The plaintiff is entitled to get 1/5th share in the items No.1 to 7 of schedule properties. The suit of the plaintiff is dismissed to get share in item No.8 of schedule property.

Draw preliminary decree accordingly.

In view of the judgment of the Hon'ble Supreme Court reported in 2022 SCC Online SC 737 office to list the matter for taking steps under Order XX Rule 18 of C.P.C. on 12.08.2026.

(Dictated to the Stenographer, transcribed by her on computer, revised, corrected and then pronounced by me in open Court on this the 1st day of July 2026)

(Kamalaksha D.)

Senior Civil Judge, Nanjangud.

ANNEXURE

List of witnesses examined for the plaintiff :-

P.W.1 - Gowramma

List of documents marked for the plaintiff :-

Ex.P.1	-	Genealogy tree
Ex.P.2	-	Copy of legal notice dated 12.01.2023
Ex.P.3	-	7 postal receipts
Exs.P.4 to 9-	-	Postal acknowledgments
Ex.P.10	-	Postal track
Ex.P.11	-	Reply notice
Ex.P.12	-	R.T.C. extract of Sy.No.186/3
Ex.P.13	-	R.T.C. extract of Sy.No.185/4
Ex.P.14	-	R.T.C. extract of Sy.No.40/1
Ex.P.15	-	R.T.C. extract of Sy.No.397/1
Ex.P.16	-	R.T.C. extract of Sy.No.414/2
Ex.P.17	-	R.T.C. extract of Sy.No.39
Ex.P.18	-	R.T.C. extract of Sy.No.417/2

D.W.1 - Nagesh Kumar N.
D.W.2 - B.Nanjappa

Ex.D.1	-	Certified copy of partition deed dated 04.10.2022
Ex.D.2	-	Carbon copy of tax paid receipt
Ex.D.3	-	R.T.C. extract of Sy.No.414/2
Ex.D.4	-	Registered partition deed dated 04.10.2022

Senior Civil Judge,
Nanjangud.