

KAMS500002732021



**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 August 2026

O.S./62/2021

Plaintiff **:** Chennabasavanna S/o Basavanna,
aged about 45 years,
residing at Hadinaru Village,
Chikkayyanachathra Hobli,
Nanjangud Taluk.

(By Sri. Muthuraju, Adv.)

-V/s-

Defendants 1. Basavanna S/o late Kittaiiahna
Kalappa,
aged about 77 years,

2. Deviramma W/o Basavanna,
aged about 69 years,

3. Prema W/o Mahadevaswamy,
aged about 46 years,

defendants No.1 to 3 are
residing at Hadinaru Village,

Chikkayyanachathra Hobli,
Nanjangud Taluk.

4. Komala W/o Shivaswamy,
D/o Basavanna,
aged about 42 years,
residing at D.No.11, 2nd Cross,
8th Main, near K.G.G.College,
Hegganahalli Cross,
Srigandhanagara,
Sunkadakatte,
Bengaluru.
5. Mahesha H.G. S/o Guruswamy,
aged about 45 years,
residing at No.3, 1st Main,
Hongirana, B.S.M.Extension,
Bande Mutt Layout,
Kengeri, Bengaluru-560060 and also
residing at Hadinaru Village,
Chikkayyanachathra Hobli,
Nanjangud Taluk.

(By Sri. D. Jagadeesh – Adv. for D.1 to 4
Sri. S.Umesh – Adv. for D.5)

Date of institution of the suit	20.04.2021		
Nature of suit	Partition and separate possession		
Date of commencement of Trial	24.04.2024		
Date on which the judgment was pronounced	01.08.2026		
Duration of suit	Years	Months	Days
	05	03	12

J U D G M E N T

The plaintiff filed the suit for partition and separate possession of schedule properties bearing Sy.No.150/1 measures 11 guntas, Sy.No.150/2 measures 35 guntas, Sy.No.661/2 measures 29 guntas, Sy.No.1009/2 measures 20 guntas, Sy.No.1010/1 measures 1.36 guntas, Sy.No.7/1P measures 3 guntas and vacant site bearing No.1486 measures east-west 41 feet north-south 37 feet, situated at Hadinaru Village of Nanjangud Taluk.

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

It is submitted that, the plaintiff and defendants No.3 and 4 are the children of defendants No.1 and 2 and the suit schedule properties are ancestral and joint family properties of the plaintiff and defendants. They are in joint possession and enjoyment of the suit schedule properties. They are governed by Hindu law, hence the plaintiff and defendants have got equal share in the suit schedule properties. Presently the khatha of items No.1 to 3 and 6 to 9 are standing in the name of 1st defendant and suit item No.4

in the joint names of defendants No.3 and 4. Similarly item No.5 standing in the name of defendant No.2. The suit items No.4 and 5 are the joint family properties even the 1st defendant has no manner of exclusive right of whatsoever to bequeath the said properties. However, the 1st defendant executed gift deed in favour of the 2nd defendant dated 24.05.2013. Subsequently the 2nd defendant bequeathed the schedule properties in favour of the defendants No.3 and 4 through gift deed dated 04.02.2016. The plaintiff came to know the said fact when the defendants No.3 and 4 are trying to change the khatha into their joint names as per the alleged gift deed. After changing the khatha the defendants are trying to sell the schedule properties to some other persons. The gift deeds are not binding to the share of the plaintiff. Previously the 4th defendant had filed O.S.36/2014 on the file of this court against the plaintiff and other defendants. The gift deed executed during the pendency of the said suit is illegal. Then the 4th defendant colluded with other defendants the suit was withdrawn. Thereafter the plaintiff requested for his legitimate share,

but the defendants refused to make partition on 20.03.2021. Hence, the plaintiff without any other option has filed this suit.

3. Summons were duly served. Defendants have appeared before the court through their respective counsel. Defendant No.1 filed written statement and defendants No.2 to 4 adopted the written statement of defendant No.1. The 1st defendant in the written statement has explained that some properties shown in the schedule are self-acquired properties of the defendant No.1, so the plaintiff cannot claim share in the said properties. The schedule properties were divided through oral partition, as per the oral partition the defendants have changed khatha through M.R.No.226/2006-07 for the properties allotted in the said oral partition. Thereafter the 1st defendant availed loan from Co-operative Bank, Hadinaru Village by mortgaging the alleged property. Similarly the 1st defendant took loan from the said bank in the year of 2016-17 and 2018-19 repeatedly. It is further submitted that the schedule

properties are not at all joint family properties of the plaintiff and defendants. Item No.3 and item No.7 properties came to the share of the 1st defendant. Item No.4 property belonging to the 1st defendant and he executed gift deed dated 24.05.2013 in favour of the 2nd defendant. Hence, the plaintiff has no right in item Nos.3, 4 and 7 properties. Item No.5 in Sy.No.1010/1 measures 1 acre 36 guntas is purchased property through registered sale deed dated 06.03.1986, subsequently the 1st defendant executed the gift deed dated 24.05.2013 to the 2nd defendant and thereafter the 2nd defendant gifted the said property to her children i.e., defendants No.3 and 4 through gift deed dated 04.02.2016. The defendants No.3 and 4 became absolute owners of the gifted property. Item No.6 property bearing Sy.No.7/1B changed as Sy.No.7/9 was allotted to this defendant through oral partition and he gifted the said property through gift deed dated 25.03.2021 to the 3rd defendant Prema. The suit schedule properties were already partitioned long back through oral partition. Hence, there is no cause of action to file the suit, because the suit schedule properties have

already lost the status of joint and ancestral properties.

Hence, the defendants pray to dismiss the suit with cost.

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

- 1 Whether the plaintiff proves that the suit schedule properties are the ancestral and joint family properties as alleged ?
- 2 Whether the plaintiff proves that the plaintiff and the defendants are in joint possession and enjoyment of the suit schedule properties?
- 3 Whether the plaintiff is entitled for partition and separate possession of the suit schedule properties?
- 4 Whether the plaintiff is entitled for 1/4th share in the suit schedule properties?
- 5 What order or decree?

5. In order to get the relief, the plaintiff examined himself as P.W.1 and got marked 16 documents as Exs.P.1 to P.16. On the other hand, the defendant No.3 is examined as D.W.1 and got marked 7 documents as Exs.D.1 to 7.

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

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

Issues No.1 & 2 : in the negative

Issues No.3 & 4 : In the negative

Issue No.5 : As per final order for the following

REASONS

8. **Issues No.1 & 2** : These issues are interlinked with each other, hence they are taken together for discussion to avoid repetition. The suit is brought for partition and separate possession in total 7 items properties described in the schedule. P.W.1 filed chief-examination affidavit by repeating the facts of the plaint. The trustworthy of P.W.1 is questioned in the cross-examination. P.W.1 admits that his grandfather had got the property in Sy.No.150/1 measures 11 ½ guntas, Sy.No.150/2 measures 32 guntas and Sy.No.661/2 measures 29 guntas, these three properties came to the

grandfather of the plaintiff. Thereafter the said properties were partitioned between his sons, i.e., Devaraju, Naganna and Basavanna. According to P.W.1 the present properties came to the share of his father through partition. But P.W.1 did not know the exact portion of the property came to the share of his father. Therefore, it is very hard to presume that the schedule properties are the joint family properties, because evidence of P.W.1 is not so clear to say that the schedule properties continuously passed through three generations. The passing of family properties with three generations is the prime criteria in partition suit.

9. It is further deposed by P.W.1 that, though items No.4 and 5 properties are purchased properties, but P.W.1 says that the said properties were purchased by the income of other joint family properties and items No.4 and 5 properties are purchased properties for their family, but P.W.1 does not know his age at the time of purchase of two properties. But he says that he was studying in 6th or 7th standard at the time of purchase of items No.4 and 5

properties. However, P.W.1 further says that items No.4 and 5 properties were purchased after 2-3 years of his 10th standard education. So, P.W.1 has not sure about the date and year of purchase of items No.4 and 5 properties. The learned counsel for the defendants argued that, family properties were already partitioned through oral partition and beneficiaries were given share in the family properties. Similarly the plaintiff has also got property in the oral partition. The below mentioned portion of cross-examination may enough to prove the oral partition. The said portion runs as below:

ನನ್ನ ಮತ್ತು ನನ್ನ ತಂದೆ ನಡುವೆ ಬಿನ್ನಾಭಿಪ್ರಾಯ ಆದ ನಂತರ ಊರಿನ ಪಂಚಾಯಿತಿ ಮೂಲಕ ನನಗೆ 2-3 ಆಸ್ತಿಗಳನ್ನು ನನ್ನ ತಂದೆ ಬಿಟ್ಟುಕೊಟ್ಟರು ಎಂದರೆ ಸರಿಯಲ್ಲ. ಆ ಆಸ್ತಿಗಳು ಅಂದರೆ ನನ್ನ ಖಾತೆ ಹೆಸರಿನಲ್ಲಿರುವ ಆಸ್ತಿಗಳು ನನ್ನ ತಂದೆಗೆ ಅವರ ತಂದೆಯಿಂದ ಬಂದ ಪಿತ್ರಾರ್ಜಿತ ಆಸ್ತಿಗಳು ಎಂದರೆ ಸರಿ. ಬಾಯಿ ಮಾತಿನ ಮೂಲಕ ನನಗೆ ಕೊಟ್ಟ ಆಸ್ತಿಗಳ ಖಾತೆ ಈಗಲೂ ಸಹ ನನ್ನ ಹೆಸರಿನಲ್ಲಿ ಇದೆ. ಆ ಆಸ್ತಿ ಖಾತೆಗಳು 2006-07 ರಿಂದಲೂ ನನ್ನ ಹೆಸರಿನಲ್ಲಿದೆ ಎಂದರೆ ಸರಿ ನನ್ನ ಹೆಸರಿಗೆ ಬಂದ 151/1 151/2 ಆಗಿರುತ್ತದೆ. ಆ ಆಸ್ತಿಗೆ ನಾನು ರಾಷ್ಟ್ರೀಕೃತ ಬ್ಯಾಂಕ್ ಮತ್ತು ನಮ್ಮ ಊರಿನ ಸೊಸೈಟಿಯಿಂದ ಸಾಲ ಪಡೆದುಕೊಂಡಿದ್ದೇನೆ ಎಂದರೆ ಸರಿ. ಆ ಆಸ್ತಿಗಳನ್ನು ನಾನು ಅನುಭವಿಸುತ್ತಿದ್ದೇನೆ ಎಂದರೆ ಸರಿ. ಆಸ್ತಿಗಳನ್ನು ಬೇರೆ ಕೊಟ್ಟ ನಂತರ ನಾನು, ತಂದೆ ತಾಯಿ ಬೇರೆ ಬೇರೆ ಇದ್ದೇವೆ ಎಂದರೆ ಭಾಗ ಕೊಟ್ಟ ಮೇಲೆ ಇತ್ತೀಚೆಗೆ ಬೇರೆ ಬೇರೆ ಇದ್ದೇವೆ ಎನ್ನುತ್ತಾರೆ. ನನ್ನ ತಂದೆಗೆ ಬಂದ ಮನೆ

ಪಿತ್ರಾರ್ಜಿತ ಮನೆ. ಆ ಮನೆಯಲ್ಲಿ ನನಗೆ ¼ ಭಾಗ ಕೊಟ್ಟಿದ್ದರು. ಆ ಮನೆಯ ಒಂದು ಭಾಗದಲ್ಲಿ ಕೊಟ್ಟಿಗೆ ಇದೆ. ಅರ್ಧ ಭಾಗ ಕೊಟ್ಟಿಗೆ ಇರುವ ಕಾರಣ ¼ ವಾಸ ಮಾಡಲು ಯೋಗ್ಯ ಮನೆ ಎಂದರೆ ಸರಿ.

10. So, the above referred cross-examination clearly shows that the plaintiff was given share in the father's property obtained through oral partition. The khatha of the allotted property was got changed in the name of 2006-07 and the said properties are in Sy.No.151/1 and 151/2. These properties are the items No.1 and 2 properties of the schedule. P.W.1 further categorically deposed that after change of khatha he availed loan from the society by mortgaging the properties of Sy.No.151/1 and 151/2. So, the said portion clearly indicates the division of family properties between the plaintiff and defendants through oral partition.

11. The burden is upon the plaintiff to prove that the suit schedule properties are joint family and ancestral properties, but the above referred cross-examination does not establish the nature of the schedule properties as joint family properties. The Hon'ble Supreme Court in the case

of **D.S. Lakshmaiah and another Vs. L. Balasubramanyam and another** reported in **A.I.R. 2003 SC 3800**, has discussed that, *“In view of the aforesaid discussion, the respondents having failed to discharge the initial burden of establishing that there was any nucleus in the form of any income whatsoever from Item No.2 property and no other nucleus was claimed, the burden remained on the respondents to establish that Item No.1 property was joint family property. In this view, the fact that the first appellant has not led any evidence to establish his separate income is of no consequence insofar as the claim of the respondents is concerned. Under these circumstances, for failure to lead evidence, the respondents' claim of Item No.1 to be joint family property would fail as rightly held by the first appellate court.”*

The Hon'ble Supreme Court in the case of **Lakkireddi Chinna Venkata Reddi Vs. Lakkireddi Lakshmama** reported in **1964 (2) SCR 172** and **K.V.Narayanan Vs. K.V.Ranganadhan and others** reported in **(1977) 1 SCC 244**. Further in the below mentioned judgment the Hon'ble Supreme Court in the case of **U.R.Virupakshaiah**

Vs. Sarvamma and another reported in **AIR 2009 SUPREME COURT 1481** has held that, ***“It is well settled that the presumption in regard to existence of joint family gets weaker and weaker from descendant to descendant and such weak presumption can be rebutted by adduction of slight evidence of separate possession of the properties in which even the burden would shift to the plaintiff to prove that the family was a joint family.”*** In the present matter the plaintiff categorically admits that he got items No.1 and 2 properties that is in Sy.No.150/1 and 150/2 (but the survey numbers of the properties wrongly typed as 151/1 and 151/2) through oral partition.

12. The plaintiff has produced total 16 documents. Ex.P.1 is the R.T.C of Sy.No.7/9, The said property is not the subject matter herein. Ex.P.2 is the R.T.C. of Sy.No.661/3, the said property is also not the subject matter herein. Ex.P.3 is the R.T.C. of Sy.No.1010/1 pertaining to item No.5 property standing in the name of

H.B.Prema D/o Basavanna acquired through gift deed. P.W.1 in the cross-examination has deposed that 3rd defendant enjoying the property by virtue of gift deed. Ex.P.4 is the certified copy of order sheet of O.S.33/2014 filed by one Komala, she is the 4th defendant herein. As per the order sheet, the suit is dismissed as withdrawn. Ex.P.5 is the certified copy of plaint in O.S.33/2014. The suit was filed for the relief of partition by the 4th defendant herein, but that was withdrawn. Ex.P.6 is the certified copy of written statement filed by the 1st defendant in O.S.33/2014. The 1st defendant in that suit was one Basavanna, he was also 1st defendant herein. Ex.P.7 is the certified copy of written statement of defendant No.4 of that suit. Ex.P.8 is the joint memo. Ex.P.9 is the certified copy of withdrawal memo. Ex.P.10 is the family sketch. Ex.P.11 is the R.T.C. of Sy.No.1009/2 pertaining to item No.4 property standing in the name of Deviramma, she is none other than the 2nd defendant. Again P.W.1 admits that the 2nd defendant enjoying suit item No.4 property by virtue of gift deed executed by the 1st defendant means her

father. Ex.P.12 is the R.T.C. of Sy.No.1010/1, similar R.T.C. has been produced. Ex.P.13 is the R.T.C. of Sy.No.7/9, again the said property is not the subject matter herein. However, it is to be noted that the plaintiff has not produced any document of items No.1, 2, 3, 6 and 7 properties. P.W.1 admitted that, after oral partition the property of Sy.No.150/1, 150/2 were given to his share and khatha of that properties are also got changed to his name. P.W.1 in the cross-examination as deposed as below:

ನನ್ನ ತಂದೆ ತಾಯಿಯನ್ನು ಅವರ ಹೆಣ್ಣು ಮಕ್ಕಳು ನೋಡಿಕೊಳ್ಳುವ ಕಾರಣ ಕೆಲವು ಆಸ್ತಿಗಳನ್ನು ದಾನ ಪತ್ರದ ಮೂಲಕ ನೀಡಿದ್ದಾರೆ ಎಂದರೆ ಸರಿ. ಅದನ್ನು ನನ್ನ ಸಹೋದರಿಯರು ಅನುಭವಿಸುತ್ತಿದ್ದಾರೆ ಎಂದರೆ ಸರಿ. ನನ್ನ ತಂದೆ ತಾಯಿ ಅವರ ಜೀವನಕ್ಕಾಗಿ ಇಟ್ಟುಕೊಂಡ ಆಸ್ತಿಯನ್ನು ಅವರು ಅನುಭವಿಸುತ್ತಿದ್ದಾರೆ ಎಂದರೆ ಸರಿ.

13. So it appears in the evidence of P.W.1 that, father of defendants No.2 and 3 had executed gift deed in their favour, because defendants No.2 and 3 being the daughters of Basavanna looked after their father, hence he executed the gift deed. As per admission of P.W.1, the

defendants No.2 and 3 are in possession of the gifted properties. The plaintiff has not given reason for non-production of R.T.C. or any other revenue documents of items No.1 and 2 properties. The admission clearly demonstrates that the schedule properties were already orally partitioned. The said admission gets more stronger because P.W.1 says that he availed loan from the society of his village and nationalized bank. The said admission clearly goes to show that the family properties of the plaintiff and defendants are already partitioned. Hence, the question of joint family properties does not arise at all. Hence, **issues No.1 and 2** are answered **in the negative**.

14. **Issues No.3 and 4:** The plaintiff has filed the suit for the relief partition and separate possession. The nature of the schedule properties is discussed in issues No.1 and 2. On behalf of the defendants the 3rd defendant is examined as D.W.1 and asserts that she became the absolute owner of the schedule properties by virtue of gift deed dated 04.02.2016. The cross-examination of D.W.1

was not asked though she was present in the court, the plaintiff and his counsel were absent. Therefore, stage of cross-examination of D.W.1 was closed. These all show that the plaintiff is not in joint possession and suit schedule properties are not the joint family properties. Hence, the plaintiff is not entitled to get the relief of partition including any other relief of what has been asked in the plaint. Hence, **issues No.3 and 4** are answered **in the negative**.

15. **Issue No.5:** 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 1st day of August 2026)

(Kamalaksha D.)

Senior Civil Judge, Nanjangud.

ANNEXURE**List of witnesses examined for the plaintiff :-**

P.W.1 - Chennabasavanna

List of documents marked for the plaintiff :-

Exs.P.1 to 3- R.T.C. extracts
Exs.P.4 to 9- Certified copies of order sheet, plaint,
written statement, joint memo, memo in
O.S.33/2014
Ex.P.10 - Genealogy tree
Ex.P.11 - R.T.C. extract of Sy.No.1009/2
Ex.P.12 - R.T.C. extract of Sy.No.1010/1
Ex.P.13 - R.T.C. extract of Sy.No.7/9
Ex.P.14 - R.T.C. extract of Sy.No.1010/1
Ex.P.15 - R.T.C. extract of Sy.No.1009/2
Ex.P.16 - M.R.extract

List of witnesses examined for the Defendants :-

D.W.1 - Prema

List of documents marked for the Defendants:-

Ex.D.1 - Registered sale deed dated 06.03.1986
Ex.D.2 - Registered sale deed dated 25.04.1995
Ex.D.3 - Registered sale deed dated 15.03.2000
Ex.D.4 - Registered gift deed dated 24.05.2013
Ex.D.5 - Registered gift deed dated 04.02.2016
Ex.D.6 - Digital copy of registered gift deed dated
25.03.2021
Ex.D.7 - Registered sale deed dated 13.10.2025

**Senior Civil Judge,
Nanjangud.**