



IN THE COURT OF THE SENIOR CIVIL JUDGE AT
PERIYAPATNA

Present: Sri RAJU M., M.A., LL.B.,
Senior Civil Judge & JMFC,
Periyapatna.

Dated this, the 1st Day of July 2026

OS/1/2022

Plaintiff/s : Smt.Padma D/o Mallegowda
and W/o Yellegowda, aged
about 55 years, R/o Thippuru
Village, Kasaba Hobli,
K.R.Nagara Taluk, Mysuru
District.

(By Sri B.M.Kumar, Adv.)

V/s.

Defendant/s : 1. Mallegowda dead by LRs.
1(a) Gangamma W/o Late
Mallegowda, aged about 65
years. R/o Hosaupparara
Beedi, Bettadapura Village &
Hobli, Periyapatna Taluk.
2. Shankaregowda S/o Late
Mallegowda, aged about 60
years.
3. Smt.Lakshmi W/o
Shankaregowda, aged about 50

years.

4. Mylari S/o Mallegowda, aged about 52 years.
5. Lokesha S/o Mallegowda, aged about 50 years.
6. Shiva S/o Mallegowda, aged about 48 years.
Defendant No.1 to 6 are R/o Hosaupparara Beedi, Bettadapura Village & Hobli, Periyapatna Taluk, Mysuru District.
7. M.R.Mahesh S/o Late M.P.Ramegowda, aged about 55 years.
9. Smt.Thayamma W/o Govindaraju, aged about 60 years. R/o Post Office Road, Bettadapura Village/Hobli, Periyapatna Taluk, Mysuru District.

(D2 Exparte)

(D1,4,5 & 6 & D1(a) By Sri Madhusudan K.J., Adv.)

(D2 & 3 By Sri M.C.Karthik (S.M.P.), Adv.)

(D7 By Sri B.N.Harshith, Adv.)

Date of Institution

:

04.01.2022.

Nature of the Suit

For partition and separate possession.

Date of judgment	:	01.07.2026		
Duration of the suit	:	Years	Months	Days
		04	05	27

**Senior Civil Judge & JMFC
Periyapatna**

J U D G M E N T

The plaintiff has filed this suit for the relief of partition and separate possession of her 1/6th share in the suit schedule properties by metes and bounds and to declare that the Sale Deed executed in favour of defendant No.7 pertaining to item No.11 of suit schedule property is not binding on the plaintiff and such other reliefs as the Court deems fit.

2. The case of the plaintiff is that:

The plaintiff and defendant No.1 to 6 are the members of Hindu Joint Family. The suit schedule properties are the ancestral & joint family properties of the plaintiff and defendants No.1 to 6 and they have been in joint possession of the suit schedule properties and there was no partition effected between them. The 1st defendant is the father and

defendant No.3 is the sister-in-law, defendant No.2 & 4 to 6 are the brothers of the plaintiff. After marriage of the plaintiff, the defendants did not care to the request and betterment of her and they colluding with each other, enjoying the proceeds of the suit schedule properties. When the plaintiff demanded for partition in respect of suit schedule properties, the defendants have refused to effect partition. The defendant No.7 and her supporters have claimed possession over item No.11 of the suit schedule property, stating that she has purchased the same from defendant No.1 to 6 through registered Sale Deed dt:05.07.2012, which is created by the defendants by colluding with each other. The said alienation was done with an intention to curtail the legitimate right of the plaintiff over the suit schedule properties. Therefore, the plaintiff has constrained to file the suit.

3. After service of summons, defendants No.1, 4 to 6, defendant No.2 and 3 and defendant No.7 have appeared through their respective counsels. Defendant No.2 and 3 have filed their joint written statement.

4. The defendant No.2 and 3 in their written statement admitting the relationship of the plaintiff with them, but denied that they are members of the Hindu joint

undivided family. It is the case of defendant No.2 and 3 that on 23.04.2007 the plaintiff and defendant No.1 to 6 have partitioned their ancestral joint family properties through registered Partition deed, with an intention to grab the properties of defendant No.2 and 3, the plaintiff colluding with defendant No.1 and 4 to 6 has filed this false suit. This Court in OS No.329/2021 has restrained the defendant No.1 and 4 to 6 in respect of item No.2 of the schedule property, having grudge in this regard, with an intention to escape from the permanent injunction order passed by the Court, the defendant No.1 and 4 to 6 colluding with plaintiff, filed this suit with false set of facts. The defendant No.1 to 6 have handed over the possession of the suit schedule item No.11 of the property to the defendant No.7 as on the date of Sale Deed, executed in her favour. Therefore, either the plaintiff or the defendant No.1 to 6 are not at all in possession of the item No.11 of the suit schedule property. The court fee paid by the plaintiff and the suit valued by her is not correct. The suit is barred by law of res judicata. The suit is bad for mis-joinder of properties and non-joinder of necessary parties. Because the item No.10 of the suit schedule property is the self acquired property of defendant No.2, the plaintiff without having any right, title or interest over the said

property, has included the same for partition, the revenue documents pertaining to the said property are standing in the name of K.S.Krishnamurthy W/o K.Shyamanna, he is not impleaded as party to the suit.

5. Further it is contended that as per the registered partition deed effected on 23.04.2007 among the members of the family of plaintiff and defendant No.1 to 6, they are in the possession and enjoyment of their respective shares by paying revenue. As per partition deed, defendant No.2 is shown as 'B' schedule holder and the property bearing Sy.No.221/3A1 measuring 0.08 guntas and Sy.No.289 measuring 3 acres 0.37 guntas situated at Bettadapura Village were fallen to the share of defendant No.2. Thereafter, on 27.09.2019 the defendant No.2 has purchased the property bearing Sy.No.288/2A4 measuring 0.17 guntas, which is item No.3 of the suit schedule property and in respect of the same, defendant No.2 has executed Gift Deed in favour of defendant No.3. Further, the defendant No.2 has purchased the item No.19 of the suit schedule property on 01.07.2020 from its original owner. When the plaintiff and defendant No.1, 4 to 6 are trying to interfere with the possession of property bearing Sy.No.221/3A1 measuring 0.08 guntas, the defendant No.2 filed suit against them in OS No.350/2021,

wherein the Court has passed an order against the plaintiff and defendant No.1 & 4 to 6, restraining them from interfering with the possession of the defendant No.2. Being enraged by the same, the plaintiff and defendant No.1 & 4 to 6 by colluding with each other, with an intention to grab the self acquired properties of defendant No.2 and 3, have filed this false suit. Hence, prayed to dismiss the suit with cost.

6. By virtue of the above pleadings, the following issues are framed;

1. Whether the plaintiff proves that, the suit properties are ancestral and joint family properties?
2. Whether the defendant No.2 and 3 prove that the joint status already severed under registered partition deed dt:23.04.2007 as contended in the written statement?
3. Whether the suit is bad for non-joinder of necessary parties?
- 4 Whether the suit is bad for non-inclusion of all family properties?
5. Whether the suit is properly valued and Court fee paid is sufficient?
6. Whether the plaintiff proves that she is entitled for partition and separate possession of 1/6th share in the suit properties?

7. What Order or Decree?

7. To prove the case of the plaintiff, plaintiff got

examined herself as PW1 and got marked the documents at Ex.P1 to 26 and got examined her SPA Holder as PW2 and got marked 3 documents at Ex.P27 to 29 and closed her side. On the other hand, the defendant No.2 is examined as DW1 and got marked 29 documents as per Ex.D1 to D29 and closed their side.

8. Heard arguments on both sides and perused the entire evidence on record.

9. Answer to the above issues is as follows;

Issue No.1: **In the Negative.**

Issue No.2: **In the Affirmative.**

Issue No.3: **Does not survive for consideration.**

Issue No.4: **Does not survive for consideration.**

Issue No.5: **In the negative.**

Issue No.6: **In the Negative.**

Issue No.7: As per final order
for the following;

REASONS

10. **Issue No.1 & 2:** As both these issues are interconnected with each other, they are taken up together for discussion in order to avoid repetition of facts.

11. As per the plaint averments, the plaintiff and defendant No.2 to 6 are the children of defendant No.1 Mallegowda and Gangamma. Since, the relationship pleaded in the plaint is not in dispute, the relationship pleaded in the plaint is accepted.

12. According to the plaintiff, the suit schedule properties are joint family properties of herself and defendants. But the defendants have pleaded that all the properties are already divided through registered partition deed. To prove this fact, the SPA Holder of plaintiff is examined as PW1, the SPA executed by the plaintiff is produced and marked at Ex.P27. To prove that suit schedule properties are joint family properties, PW1 has produced 18 RTCs, which are marked at Ex.P1. As per 18 RTCs, suit item No.1 property is in the name of defendant No.2. As per RTCs marked at Ex.P2, out of 3 acres 0.14.08 guntas in suit item No.2 property, defendant No.2, 4 to 6 and plaintiff are having 0.06.08 guntas, 0.06.08 guntas, 0.06.01 guntas and 0.02 guntas respectively. As per Ex.P3 RTCs in respect of suit item No.3 property, it is in the name of defendant No.3. As per Ex.P4 and 5 RTCs, the suit item No.4 & 5 properties are standing in the name of defendant No.2. As per RTC marked at Ex.P6 to 8 the properties in item No.6 to 8 of the plaintiff

schedule are in the name of original defendant No.1 Late Mallegowda. As per Ex.P9 RTCs, the suit item No.9 property is in the name of defendant No.5. As per RTCs marked at Ex.P10 and 11, the properties in item No.10 and 11 of the plaint schedule are in the names of one Shyamanna, who is not the party to the suit and defendant No.5. As per Ex.P12, 15 and 17 RTCs, the suit item No.12, 15 and 18 properties are in the name of defendant No.6. As per RTCs marked at Ex.P13 and 16, the properties in item No.13 and 16 are in the names of defendant No.4 and 8. As per RTCs marked at Ex.P14 property in item No.14 is in the name of defendant No.5.

13. As mentioned in the column No.10 of the RTCs, it shows that respective persons have got changed the khata by was of partition. The plaintiff has also produced certified copy of the Demand Register Extracts marked at Ex.P19 to 22, as per these documents, the properties in item No.23 to 26 of the plaint schedule are entered in the names of defendant No.2, 4, original defendant No.1 Mallegowda and defendant No.6 respectively.

14. The defendants in the written statement, have contended that all the suit schedule properties have been partitioned through the registered partition deed dt:23.04.2007. To prove this fact, defendant No.2 is

examined as DW1. In support of his contention, DW1 has produced 10 documents at Ex.D1 to 10. During the course of cross-examination of plaintiff, photostat copy of registered partition deed dt:23.04.2007 is marked at Ex.D1 by way of confrontation . Digitalised copy of the same partition deed is also produced at Ex.D9. The defendant has also produced 6 RTCs marked at Ex.D2 to 7, Mutation Extracts, which is marked at Ex.D8. What are all the documents produced by the defendant, are also produced by the plaintiff.

15. PW2, in his cross-examination has deposed that " ದಾವಾ ಸಲ್ಲಿಸುವ ಕಾಲಕ್ಕೆ ದಾವಾ ಆಸ್ತಿಗಳ ಖಾತೆ ನನ್ನ ತಾತ ಮತ್ತು ಪ್ರತಿವಾದಿ ಹೆಸರಿನಲ್ಲಿ ಇತ್ತು, ಅದು ಹೇಗೆ ಬಂದಿತ್ತು ಅಂತ ನನಗೆ ಗೊತ್ತಿಲ್ಲ. ದಾವಾ ಐಟಂ.2 ರಲ್ಲಿ ನನ್ನ ತಾಯಿ ಹೆಸರಿಗೆ 2 ಗುಂಟೆ ಹೇಗೆ ಬಂದಿತು ಅಂತ ನನಗೆ ಗೊತ್ತಿಲ್ಲ. ದಾವಾ ಐಟಂ.11 ರ ಆಸ್ತಿ ತಾಯಮ್ಮ ಕೋಂ ಗೋವಿಂದರಾಜು ಎಂಬ ಹೆಸರಿನಲ್ಲಿ ಇದೆ ಎಂದರೆ ಸರಿ. ಸದರಿ ವಿಭಾಗ ಪತ್ರಕ್ಕೆ ನನ್ನ ತಾತ, ತಾಯಿ ಮತ್ತು ಉಳಿದವರೆಲ್ಲರು ಸಹಿ ಹಾಕಿದ್ದಾರೆ ಎಂದರೆ ಸರಿ..... "

16. Looking to the this evidence, PW2 admits the partition took place vide registered document dt:23.04.2007. As per Ex.D9 digitalised copy of registered partition deed, it reflects that defendant No.2, 4 to 6, the plaintiff and their father Mallegowda have entered into partition in respect of the suit schedule properties. As per the partition deed, the properties mentioned in A to F allotted to the share of

deceased Mallegowda defendant No.1, 2, 4 to 6 and plaintiff respectively. By following the partition, the concerned parties have got changed the khata including the plaintiff. The plaintiff does not explain how she got changed the khata for extent of 0.02 guntas of land. The documentary evidence as well as oral evidence of both the parties specifically depict that the suit schedule properties are already divided between the plaintiff and defendant No.1 to 6. But, the plaintiff without disclosing the same, has filed the suit for the relief of partition and separate possession of the properties. Once the properties are divided through registered instrument, the plaintiff cannot seek partition of the same properties. It is not the case of the plaintiff that the properties are not allotted equally through the registered partition deed or the said partition is not binding on her. The plaintiff without questioning the earlier partition, she has filed the suit for the relief of partition, which is not permissible under law. once partition always a partition. Whereas properties already partitioned through registered instrument, the suit is not maintainable. Therefore, I answer **Issue No.1 in the Negative and issue No.2 in the Affirmative.**

17. **Issue No.3 and 4:** In view of the findings on issue No.2, these two issues do not survive for consideration.

Accordingly, **issue No.3 and 4 are answered in the Negative.**

18. **Issue No.5:** The defendants in their written statement have stated that suit is not valued properly and Court fee paid by the plaintiff is insufficient. As per the suit valuation slip annexed with the plaint, the plaintiff has valued the suit for the relief of partition and separate possession, as per Sec.7(2) of KCF and SV Act and paid the Court fee of Rs.200/- on the plaint.

Sec.7 of KCF & SV Act -Determination of market value.

(1) Save as otherwise provided, where the fee payable under this Act depends on the market value of any property, such value shall be determined as on the date of presentation of the plaint.

(2) The market value of land in suits falling under sections 24(a), 24(b), 26(a), 27, 28, 29, 31, 35(1), 35(2), 35(3), 36, 38, 39 or 45 shall be deemed to be,-

(a) where the land forms an entire estate, or a definite share of an estate, paying annual revenue to Government, or forms part of such an estate

and is recorded in the Deputy Commissioner's register as separately assessed with such revenue, and such revenue is permanently settled- twenty-five times the revenue so payable:

(b) where the land forms an entire estate, or a definite share of an estate, paying annual revenue to Government, or forms part of such estate and is recorded as aforesaid, and such revenue is settled, but not permanently-twelve and a half times the revenue so payable:

(c) where the land pays no such revenue, or has been partially exempted from such payment, or is charged with any fixed payment in lieu of such revenue-fifteen times the net profits if any from the land during the year next before the date of presenting the plaint or thirty times the revenue payable on the same extent of similar land in the neighbourhood, whichever is lower;

(d) where the land forms part of an estate paying revenue to Government, but is not a definite share of such estate and is not separately assessed as above mentioned or the land is a garden or the

land is a house site whether assessed to full revenue or not, or is land not falling within the foregoing description-the market value of the land.

Explanation. - The word "estate", as used in this section means any land subject to the payment of revenue, for which the proprietor or farmer or raiyat shall have executed a separate engagement to Government, or which in the absence of such engagement shall have been separately assessed with revenue.

Section 24 of the Karnataka SV & SV Act reads as follows;-24. Suits for declaration.

- In a suit for a declaratory decree or order, whether with or without consequential relief, not falling under section 25,-

- (a) where the prayer is for a declaration and for possession of the property to which the declaration relates, fee shall be computed on the market value of the property or on [rupees one thousand] [Substituted by Act 13 of 1982 w.e.f. 1.4.1982.], whichever is higher;

(b) where the prayer is for a declaration and for consequential injunction and the relief sought is with reference to any immovable property, fee shall be computed on one-half of the market value of the property or on [rupees one thousand] [Substituted by Act 13 of 1982 w.e.f. 1.4.1982.], whichever is higher;

(c) [x x x] [Omitted by Act 13 of 1982 w.e.f. 1.4.1982.]

(d) in other cases, whether the subject matter of the suit is capable of valuation or not, fee shall be computed on the amount at which the relief sought is valued in the plaint or on [rupees one thousand] [Substituted by Act 13 of 1982 w.e.f. 1.4.1982.] whichever is higher.

19. As per the above provisions, the suit valuation made by the plaintiff is maximum, they have made maximum Court fee for the relief of partition and separate possession of the suit schedule properties. But the plaintiff did not value the suit for cancellation of the sale deed and also not paid court fee. As per section 38 of the Karnataka court fee and suit valuation act the plaintiff may value the suit for

cancellation sale deed as per section 7(2) based on 25 times of the land revenue Act. The plaintiff has sought for cancellation of sale deed in respect of property in item No.11 property, as per the RTC land revenue is fixed at Rs.1.31/-, and 25 times land venue comes to Rs.32.75/-, which is the deficit court fee payable by the plaintiff. Therefore, the **issue No.5 is answered in the Negative.**

20. **Issue No.6:** In view of my findings on Issue No.1 and 2, this issue No.6 does not survive for consideration, hence, **issue No.6 is answered in the Negative.**

21. **Issue No.7:** By virtue of above findings, this Court proceeds to pass the following:

ORDER

Suit of the plaintiff is dismissed.

Draw decree accordingly, after
deposit of deficit court fee of Rs.32.75/-.

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

(Raju M.)
Senior Civil Judge
Periyapatna.

ANNEXURES

List of witnesses examined on behalf of plaintiff/s:-

PW1 : Padma

PW2 : Anilkumar

List of documents marked on behalf of Plaintiff/s:-

Ex.P1to 18 : RTCs

Ex.P19 to 22 : Demand Register Extracts

Ex.P23 to 26 : Invoices

Ex.P27 : Special Power of Attorney

Ex.P28 : Certified copy of plaint in OS No.329/2021

Ex.P29 : Certified copy of plaint in OS No.350/2021

List of witnesses examined on behalf of defendant/s:-

DW1 : Shankaregowda

List of documents marked on behalf of defendant/s:-

Ex.D1 : Xerox copy of Regd. Partition Deed

Ex.D1(a) to (f) : Photos identified in partition Deed

Ex.D2 to 7 : RTC

Ex.D8 : Mutation extract

Ex.D9 : Regd. Partition Deed

Ex.D10 : Regd. Sale Deed

**Senior Civil Judge
Periyapatna.**