

KAMS610006672021



**IN THE COURT OF PRL.CIVIL JUDGE AND JMFC.,
AT PERIYAPATNA.**

:- P R E S E N T :-

Sri.YOGESHA M.R.,_{B.A.LLB.},
PRL.CIVIL JUDGE AND JMFC.,
PERIYAPATNA.

*Dated this the **21st day of APRIL, 2026.***

OS.No.85/2021

PLAINTIFF/S : P.K.Gayathri, 63 yrs,
D/o late P.D.Kempegowda,
W/o Sri.C.H.Kalegowda,
R/at 565, 9th Cross,
Aravindanagara, Mysuru.
*(Represented by Sri.**BJM.**, Advocate)*

V/s

DEFENDANT/S :**1.** Smt.P.K.Kamalamma,
D/o late P.D.Kempegowda,
W/o late K.B.Shivarudrappa,
R/at C/o K.A.Sujatha,
W/o Ramachandra,

Chikkavaddarakeri,
Hettanehebbagilu Post,
Periyapatna Taluk.

- 2.** P.K.Narayana, 77 yrs,
S/o late P.D.Kempegowda,
R/at Bettadapura Road,
Periyapatna Town,
Periyapatna.
- 3.** P.K.Rajshekar, 75 yrs,
S/o late P.D.Kempegowda,
R/at Door No.28, 23rd Cross,
8th Main Road, 3rd Stage,
'E' Block, Vijayanagara,
Mysuru.
- 4.** Prabhavathi P.K., 67 yrs,
D/o late P.D.Kempegowda,
W/o Sri.Srinivasa H.A.,
R/at Hathuru Village,
Virajapete Taluk,
Kodagu District.
- 5.** P.K.Vasudeva, 70 yrs,
S/o late P.D.Kempegowda,
R/at Door No.1657, Isiri
Bettadapura Road,
Periyapatna Town.

- 6.** Sudha P Gowda, 65 yrs,
D/o late P.D.Kempegowda,
W/o late Venkategowda,
R/at Door No.431, 1st Floor,
4th Cross, 8th Main,
Koramangala, Bengaluru.
- 7.** P.K.Umesha, 62 yrs,
S/o late P.D.Kempegowda,
R/at Door No.346, 6th Main Road,
2nd Stage, Gokulam,
Mysuru-02.
- 8.** P.C.Shashikumar @ Shashi,
60 yrs,
S/o late P.K.Chandrashekaraiiah,
R/at Sannaiahna Beedi,
Periyapatna Town.
- 9.** P.C.Ravi, 57 yrs,
S/o late P.K.Chandrashekaraiiah,
R/at C/o Shashi Distalaries,
No.501/A, 9th Mylikallu
Bhannerughatta Road,
Hulimavu, Bengaluru-76.
- 10.** P.C.Krishna, 55 yrs,
S/o late P.K.Chandrashekaraiiah,
R/at Purasabe Quarters,
Post office Road,
Periyapatna Town.

- 11.** P.C.Jyothi, 50 yrs,
D/o late P.K.Chandrashekaraiyah,
W/o Santhosh,
R/at Door No.444, 'Navitha',
1st Floor, Flat No.102,
4th Main Road,
A.M.S.Layout, Vidhyaranyapura,
Bengaluru-97.

(Dft-1 & 3 - **Ex-parte**)

(Dft-2 Represented by Sri.**CPM.**, Adv)

(Dft-4 to 6 & 11 Represented by Sri.**BMK.**, Adv)

(Dft-7 & 9 Represented by Sri.**CKM.**, Adv)

(Dft-8 & 10 Represented by Sri.**JSN.**, Adv)

Date of Institution of the suit : **03.03.2021**

Nature of the suit : **PARTITION AND SEPARATE
POSSESSION.**

Date of Commencement of
evidence : **31.05.2023**

Date of pronouncement of
Judgment : **21.04.2026**

Total Duration : **YEAR/S MONTH/S DAY/S**
05 01 19

(YOGESHA M.R)
PRL.CIVIL JUDGE AND JMFC.,
PERIYAPATNA.

-: J U D G M E N T :-

The plaintiff has filed the present suit against the defendants for the relief of partition and separate possession in respect of the suit schedule property.

2. The brief facts of plaintiff's case is that;

(a). The plaintiff and defendants No.1 to 7 are the children of the late P.D.Kempegowda and late Smt. S.Puttamma respectively. The defendant No.8 to 11 are the grand children of the late P.D.Kempegowda and late Puttamma and the children of the late P.K.Chandrashekaraiyah, by leaving the defendant No.8 to 11 as his legal heirs to inherit his estate. The father of the plaintiff died on 31.10.1984 and his wife died on 26.10.2020.

(b). Infact, there was already partition effected in respect of the ancestral and the joint family properties

during the life of the parents of the plaintiff and the among their sons in the year 1983 by way of panchayathi palu patti. Infact, there was no share carved out to the daughters i.e., defendant No.1, 4 and 6 and including the plaintiff in the said partition. All the sons are enjoying their respective shares in the properties fallen to their share in the said partition itself.

(c). In the said partition deed, the plaint schedule property is left for the specific purpose of maintenance of the parents during their life time. After the death of the late P.D.Kempegowda on 31.10.1984, his wife Smt.S.Puttamma acquired the suit schedule property and the same is acquired in the character of the Sthridhana property. Thereafter, the said S.Puttamma died on 26.10.2020 leaving behind the plaintiff and the defendants as her legal heirs.

(d). The suit schedule property originally belongs to the mother of the plaintiff and she purchased the suit schedule property from P.G.Yeppallarao and others sons of late Girimajirayauru by virtue of the Registered Sale Deed Dated 26.12.1940 and amended Sale Deed Dated 24.04.1951. Thereafter, with due consent of the mother of the plaintiff, the Katha of the aforesaid property was recorded in the name of the father of the plaintiff. On 06.11.2020, the plaintiff requested the defendants to effect partition and give share to her. However, the defendants declined to effect partition.

(e). The mother of the plaintiff has not made any will in any person's favour in respect of the suit schedule property and the defendants created a Will Dated 22.12.1992 in order to grab the suit schedule property. The

said fabricated Will Dated 22.12.1992 is not maintainable either under law or on facts. *Hence, this suit.*

3. On service of summons, the defendant No.2, 4 to 11 appeared through their respective counsel and defendant No.8 and 10 filed written statement from their side by denying the plaintiff's claim. The defendant No.9 filed adoption memo and adopted the written statement filed by the defendant No.8 and 10 from their side. In spite of service, the defendant No.1 & 3 remained absent, hence they were placed Ex-parte. The defendant No.2, 4 to 7 and 11, not contested the suit by filing written statement from their side.

4. The brief facts of the written statement of the defendant No.8 to 10 is as follows:-

(a). The suit of the plaintiff is bad for non-joinder of necessary parties. Infact, the defendant No.2 and 5 have

sold an extent of 0-06 guntas of land in Sy No.83 to one Sri Sharavanna S/o Rajanna and Raani D/o Rajanna under the Registered Sale Deeds. Accordingly, the above said Sharavanna and Raani are the necessary parties to this suit for the effective adjudication of the above suit. The plaintiff has not included all the family properties as stated by her.

(b). In fact, it is the pleading of the plaintiff in para-5 of the plaint that the family of the parents of the plaintiff was owning and possessing 22A-38guntas of land and a House property and she has got right of share over the same. In fact, the plaintiff has not included the lands bearing Sy.Nos.94/3, measuring 1 acre 39 guntas and the House property located in Periyapatna town. Accordingly partial partition is not maintainable in law and the suit of the plaintiff is liable to be dismissed. The suit of the plaintiff

is barred by law of limitation and not filed the above suit well within the statutory period.

(c). The plaintiff is not entitled for any reliefs as prayed in the plaint. The defendant No.5 and 11 colluded with the plaintiff and filed the above suit against the defendant No.8 to 10 even though the plaintiff has no right of share in the plaint schedule property. The defendant No.11 filed a suit bearing OS.No.31/2019 seeking partition before the Hon'ble Senior Civil Judge and JMFC, Periyapatna with respect of the properties of the defendant No.8 to 11. The present plaintiff was one of the witnesses in the above said suit and she has given false statement before the above said court. In fact, the defendant No.11 has executed a Registered Released Deed Dated 28.03.2011 and relinquished all her rights over the properties of the family of the defendant No.8 to 10 by receiving the consideration of

Rs.1,00,000/-. The above said fact is well within the knowledge of the plaintiff and even then, the plaintiff has impleaded the defendant No.11 as one of the defendants to have wrongful gain if possible. In fact, neither the plaintiff nor the defendant No.11 are having right of share over the suit schedule property. *Hence, prayed to dismiss the suit of the plaintiffs with cost.*

5. On the basis of the above pleadings, this court has framed the following issues;

:- I S S U E S :-

1. *Whether plaintiff proves that, plaintiff and defendant No.1 to 11 constitute a Undivided Joint family ?*
2. *Whether plaintiff proves that, the suit schedule property is the ancestral and joint family property of the plaintiff and defendant No.1 to 11 ?*

3. *Whether the defendant No.8 to 10 prove that, prior partition effected as contended in the written statement ?*
4. *Whether the plaintiff is entitled for the relief of Mandatory Injunction as claimed in the suit ?*
5. *Whether the plaintiff is entitled for the reliefs as claimed in the suit ?*
6. *Whether order or decree ?*

:- ADDITIONAL ISSUE :-

1. *Whether defendant No.8 & 10 proves that, grandmother of the defendant No.8 to 11 by name S.Puttamma bequeathed the suit schedule property in favour of the father of the defendant No.8 & 10 and defendant No.2, 3, 5 & 7 under a Will Dated 22.12.1992 ?*

6. In order to prove the case, the plaintiff examined herself as PW.1 and adduced as many as 21 documents as per Ex.P1 to P21. On the other hand, defendant No.8 examined himself as DW.1 and adduced as many as 23

documents as per Ex.D1 to D23 and also examined two more witnesses by name Srinivasa and Srinath as DW.2 & DW.3.

7. Heard the arguments and perused the materials available on record. The learned counsel for the plaintiff filed written argument from her side.

8. On the basis of oral and documentary evidence put forth by parties, this court findings on the above issues are as under;

ISSUE NO.1	:	PARTLY AFFIRMATIVE
ISSUE NO.2	:	PARTLY AFFIRMATIVE
ISSUE NO.3	:	NEGATIVE
ISSUE NO.4	:	NEGATIVE
ISSUE NO.5	:	PARTLY AFFIRMATIVE
ADDL.ISSUE NO.1	:	NEGATIVE
ISSUE NO.6	:	As per the final order for the following;

-. REASONS :-**ISSUE NO.1 TO 3 & ADDL.ISSUE NO.1 :-**

9. Since these issues are interrelated to each other, they are taken up together in order to avoid the repetition of facts and better appreciation of evidence.

10. It is the case of the plaintiff's is that, the plaintiff and defendants No.1 to 7 are the children of the late P.D.Kempegowda and late Smt. S.Puttamma respectively. The defendant No.8 to 11 are the grand children of the late P.D.Kempegowda and late Puttamma and the children of the late P.K.Chandrashekaraiyah, by leaving the defendant No.8 to 11 as his legal heirs to inherit his estate. The father of the plaintiff died on 31.10.1984 and his wife died on 26.10.2020. The suit schedule property originally belongs to the mother of the plaintiff and she purchased the suit schedule property from P.G.Yeppallarao and others sons of

late Girimajirayauru by virtue of the Registered Sale Deed Dated 26.12.1940 and amended Sale Deed Dated 24.04.1951. Thereafter, with due consent of the mother of the plaintiff, the Katha of the aforesaid property was recorded in the name of the father of the plaintiff. On 06.11.2020, the plaintiff requested the defendants to effect partition and give share to her. However, the defendants declined to effect partition. The mother of the plaintiff has not made any will in any person's favour in respect of the suit schedule property and the defendants created a Will Dated 22.12.1992 in order to grab the suit schedule property. The said fabricated Will Dated 22.12.1992 is not maintainable either under law or on facts.

11. In support of the plaint averments, the plaintiff adduced as many as 17 documents as per Ex.P1 to Ex.P17. Ex.P1 RTC Extract in respect of Sy.No.83; Ex.P2 Death

certificate of Puttamma; Ex.P3 Photo; Ex.P4 CD; Ex.P5 to P9 Five Certified copy of RTC Extract; Ex.P10 RTC Extract in respect of Sy.No.83; Ex.P11 Certified copy of Registered Sale Deed Dated 24.04.1951; Ex.P12 to 16 Certified copy of Five RTC Extracts in respect of Sy.No.83; Ex.P17 Certified copy of Registered Sale Deed Dated 26.12.1946.

12. The contentions of the defendant No.8 to 10 is that, The suit of the plaintiff is bad for non-joinder of necessary parties. In fact, it is the pleading of the plaintiff in para-5 of the plaint that the family of the parents of the plaintiff was owning and possessing 22A-38guntas of land and a House property and she has got right of share over the same. In fact, the plaintiff has not included the lands bearing Sy.Nos.94/3, measuring 1 acre 39 guntas and the House property located in Periyapatna town. Accordingly partial partition is not maintainable in law and the suit of

the plaintiff is liable to be dismissed. The suit of the plaintiff is barred by law of limitation and not filed the above suit well within the statutory period. The plaintiff is not entitled for any reliefs as prayed in the plaint.

13. The defendant No.8 to 10 adduced as many as 23 documents as per Ex.D1 to D23. Ex.D1 Certified copy of Registered Relinquishment Deed Dated 28.03.2011; Ex.D2 Certified copy of Partition Deed Dated 21.07.2016; Ex.D3 Certified copy of plaint in OS.No.31/2019; Ex.D4 Certified copy of Valuation Slip in OS.NO.31/2019; Ex.D5 Certified copy of Written statement in OS.No.31/2019; Ex.D6 Certified copy of Issues in OS.No.31/2019; Ex.D7 Certified copy of Deposition of the DW.1 in OS.No.31/2019; Ex.D8 Certified copy of Deposition of the DW.2 in OS.No.31/2019; Ex.D9 RTC Extract in respect of Sy.No.82/3; Ex.D10 RTC Extract in respect of Sy.No.84/2; EX.D11 RTC Extract in

respect of Sy.No.159/1; Ex.D12 RTC Extract in respect of Sy.No.159/2; Ex.D13 Copy of Voter List of Periyapatna constituency for the year 2020; Ex.D14 RTC Extract in respect of Sy.No.83; Ex.D15 to 19 Five photos; Ex.D20 CD; Ex.D21 Will Dated 22.12.1992; Ex.D21(a) Signature of Ramegowda; Ex.D21(b) Signature of K.Lmariyappa; Ex.D22 Notarized copy Tractor Installation Certificate; Ex.D23 Notarized copy of Palu parikattu Dated 13.05.1997.

14. The plaintiff averred that, the suit schedule property is the self acquired property of her mother by name S.Puttamma and the same was purchased by her under a Registered Sale Deed and she is entitle for the share in the same. The plaintiff must clearly demonstrate their specific legal interest and exact share, she is claiming. A clear family tree must be provided to establish the relationship between the parties and their respective shares.

15. In this regard, the plaintiff pleaded that, the plaintiff and defendant No.1 and 7 and late P.K.Chandrashekaraiiah are the children of the late P.D.Kempegowda and late S.Puttamma. Further, pleaded that, the defendant No.8 to 11 are the Legal Heirs of the deceased P.K.Chandrashekaraiiah.

16. The DW.1 in his cross examination deposed that;

“ನನ್ನ ತಾತ ಹಾಗೂ ಅಜ್ಜಿಗೆ ಒಟ್ಟು 9 ಜನ ಮಕ್ಕಳು. 5 ಜನ ಗಂಡು ಹಾಗೂ 4 ಜನ ಹೆಣ್ಣು ಮಕ್ಕಳು. ನನ್ನ ತಂದೆ ಟಿ.ಕೆ.ಚಂದ್ರಶೇಖರ ಹಿರಿಯವರು ಎಂದರೆ ಸರಿ. ನನ್ನ ತಂದೆ ಹೊರತುಪಡಿಸಿ ಉಳಿದ ಮಕ್ಕಳು ಬದುಕಿದ್ದಾರೆ ಎಂದರೆ ಸರಿ. ಕಮಲಮ್ಮ ಎರಡನೇಯವರು, ಅವರನ್ನು ಕುಶಾಲನಗರ ಪಕ್ಕ ಕೂಡಿಗಗೆ ಮದುವೆ ಮಾಡಿ ಕೊಡಲಾಗಿದೆ. ಉಳಿದವರು ನಾರಾಯಣ, ವಾಸುದೇವ, ರಾಜಶೇಖರ, ಉಮೇಶ, ಕಮಲಮ್ಮ, ಪ್ರಭಾವತಿ, ಸುಧಾಮಣಿ ಹಾಗೂ ಗಾಯತ್ರಿ. ವಾದಿ ಗಾಯತ್ರಿ ನಿಮ್ಮ ಅತ್ತೆ ಎಂದರೆ ಸರಿ.

17. In the said manner, the DW.1 admitted the G-tree mentioned in the plaint. Therefore, the plaintiff, defendant No.1 to 7 and late Chandrashekharaiyah are the children of late P.D.Kempegowda and late S.Puttamma.

18. The Ex.P11 is the Registered Sale Deed Dated 24.04.1951. As per the Ex.P11, the mother of the plaintiff by name S.Puttamma purchased the suit schedule property i.e., land bearing Sy.No.83 measuring 1 acre 37 guntas from its previous vendor. The Ex.P5 to 9 are the RTC Extract in respect of the suit schedule property, which was standing in the name of the P.D.Kempegowda i.e., husband of the S.Puttamma. The plaintiff averred that, with the consent of the S.Puttamma, the Katha of the suit schedule property was mutated in the name of the P.D.Kempegowda. The said averments of the plaint was admitted by the defendants.

19. The said Puttamma died on 26.10.2020 as per Ex.P2. Further, the plaintiff pleaded that, the husband of the said Puttamma also died. The Ex.P13 is the RTC Extract which is standing in the name of the S.Putamma and the same was mutated jointly in the name of the S.Putamma, P.D.Kempegowda, Narayana, Vasudeva and Umesha and the same reflects in the Ex.P13 to P15. At present the RTC Extracts pertaining to the suit schedule property is standing in the name of the aforesaid persons as per Ex.P1.

20. As per the Ex.P11, the S.Putamma purchased the suit schedule property and the same is her absolute property. The defendant No.8 & 10 in their additional written statement admitted that, the said S.Putamma purchased the suit schedule property from the P.G.Yallappa Rao and others under a Registered Sale Deed Dated 26.12.1940 and rectified Registered Sale Deed Dated 24.04.1951. As per

admission and Ex.P11, it is clear that, the suit schedule property is the self acquired property of the mother of the plaintiff by name S.Puttamma.

21. The disputed fact of the case is that, the defendant No.8 and 10 contended that, the said S.Puttamma executed a Will in favour of the defendant No.2, 3, 5, 7 and father of the defendant No.8 & 10 in respect of the suit schedule property. The said Will was seriously disputed by the plaintiff and she averred that, the defendant No.8 and 10 fabricated the same for their unlawful needs.

22. Before considering this question, it would be beneficial to summaries the legal position relating to Wills as envisaged under the Indian Succession Act and the Indian Evidence Act. A Will is the legal declaration of the

intention of the testator with respect to his property which he desires to be carried out into effect after his death.

23. A Will can be executed by every sound person who is not a minor. If the making of the Will or any part of it is caused by fraud or coercion or if the making of it is clouded by such importunity so as to take away the free agency of the testator, the same would be void. A Will may be revoked or altered by the testator at any time when he is competent to dispose of his property by a Will.

24. As regards the manner in which a Will is to be executed, Section 63 of the Act mandates three rules that a testator is required to adhere to.

(i) Firstly, the testator is required to sign or affix his mark to the Will. A Will can also be signed by some other person in his presence and in his direction.

(ii) Secondly, the signature of the testator should be so placed that it was intended to give effect to the writing as a Will.

(iii) Thirdly, the Will shall be attested by two or more witnesses, each of whom has seen the testator signing the Will.

25. As far as proof of execution of the Will is concerned, since the Will is a document required to be attested by law, by virtue of Section 68 of the Indian Evidence Act, a Will is not permitted to be used as evidence unless at least one attesting witnesses has been called for the purpose of proving its execution. This requirement is subject to the condition that the attesting witness is alive and is subject to the process of the court and is also capable of giving evidence.

26. The defendant No.8 to 10 got marked the Will Dated 22.12.1992 as per Ex.D21. In the Ex.D21, it was mentioned the S.Puttamma W/o late P.D.Kempegowda bequeathed the suit schedule property in favor of her sons i.e., defendant No.2, 3, 5, 7 and late Chandrashekaraiiah.

27. The Will becomes effective only after the death of the testator and during her life time, she can change his Will by any number of times. Law requires that last and final Will containing the wishes of the testator are to be honored.

28. At this stage, it is necessary to extract some portion of the cross of the DW.1. The DW.1 in his cross-examination deposed that;

"ನೀವು ಹಾಕಿದ ಲಿಖಿತ ಹೇಳಿಕೆಯಲ್ಲಿ ವಿಲ್ ಬಗ್ಗೆ ಬರೆದಿಲ್ಲ ಎಂದರೆ, ಹೌದು. ಅದು ಲೇಟಾಗಿ ಸಿಕ್ಕಿದೆ ಎಂದು ನುಡಿಯುತ್ತಾರೆ. ನಮಗೆ ವಿಲ್ ಸಿಕ್ಕು ಒಂದು

ತಿಂಗಳಾಯಿತು. ಹೋದ ತಿಂಗಳು ನಮ್ಮ ಮನೆಯಲ್ಲಿ
ಏನೋ ಹುಡುಕುವಾಗ ನನಗೆ ವಿಲ್ ಪತ್ರ ಸಿಕ್ಕಿದೆ"

"ನಿಡಿ-21ರ ವಿಲ್ ನಲ್ಲಿ ಇರುವ ಪುಟ್ಟಮ್ಮ ರವರ
ಸಹಿಯಲ್ಲಿ ಇರುವ ಎಸ್ ಎಂಬ ಅಕ್ಷರವನ್ನು ಎರಡೆರಡು
ಬಾರಿ ತಿದ್ದಿಲಾಗಿದೆ ಎಂದರೆ, ಹೌದು."

29. The DW.1 in his cross examination deposed that, in his written statement he has not taken any contentions with respect of the execution of the Will by said S.Puttamma and the same was recently traced in his house. Further, the DW.1 admitted that, the signature of the S.Puttamma was overwritten.

30. Further, the DW.2 in his cross-examination deposed that;

"ನಿಡಿ-21ರ ದಾಖಲೆಯಲ್ಲಿ ರಾಮೇಗೌಡನ ತಂದೆ ಹೆಸರು
ಅಥವಾ ಅವರ ವಯಸ್ಸು ಮತ್ತು ಯಾವ ಬೀದಿ ಎಂದು
ನಮೂದಾಗಿಲ್ಲ ಎಂದರೆ, ಸರಿ. ನನ್ನ ತಾತನ ಹೆಸರು

ಬೋರೇಗೌಡ. ನಿಡಿ-1ರಲ್ಲಿ ಬೋರೇಗೌಡರ ಮಗ
ರಾಮೇಗೌಡ ಎಂದು ಬರೆದಿಲ್ಲ."

31. The DW.2 in his cross-examination admitted that, in the Ex.D21, Ramegowda's father's name, his age, and the street name are not mentioned. Further deposed that, his grandfather's name is Boregowda and in the Ex.D21, it is not written that Ramegowda is the son of Boregowda.

32. Further, the DW.3 in his cross-examination deposed that;

"1992 ರಲ್ಲಿ ನಾನು 4 ವರ್ಷದ ಹುಡುಗ ಎಂದರೆ ಸರಿ. ಆ
ಸಮಯದಲ್ಲಿ ನಿಮ್ಮ ತಾತ ಯಾವ ಪತ್ರ
ಬರೆಯುತ್ತಿದ್ದರು ಎಂದು ಗೊತ್ತಿರಲಿಲ್ಲ ಎಂದರೆ ಸರಿ."

"ನಿಡಿ-21ರ ಮೊದಲ ಪುಟ್ಟದಲ್ಲಿ ಸೀಲು ಹಾಗೂ ಸಹಿ
ಇಲ್ಲ ಎಂದರೆ ಸರಿ."

33. The DW.3 in his cross examination admitted that, in the year 1992, he was aged about 4 years and in the first

page of the Ex.D21 not contains the Seal and Signature of the Deed writer.

34. The Hon'ble Supreme court of India in Babu Singh & others V/s Ram Sahai @ Ram Singh observed that;

“When genuineness of a Will is in question, apart from execution and attestation of Will, it is also the duty of a person seeking declaration about the validity of the Will to dispel the surrounding suspicious circumstances existing if any. Thus, in addition to proving the execution of the Will by examining the attesting witnesses, the propounder is also required to lead evidence to explain the surrounding suspicious circumstances, if any. Proof of execution of the Will would, inter alia, depend thereupon.”

35. This court is of the opinion that, there are various reasons which compel the court to treat the Will - Ex.D21 as shrouded by suspicious circumstances: **(1)** The defendants have not called another attesting witness for the purpose of proving its execution. **(2)** Irregular line spacing in the Will**(3)**

The Will suddenly appears without a logical explanation of where it was hidden or who found it(4). The signature in the Will appears inconsistent and the defendants have not adduced any admitted signature of the S.Puttamma (5) The Will surfaces after a long, unexplained delay following the testator's death(6) The Will is silent on why her daughters were excluded.(7) The DW.1 in his cross examination deposed that "ಹೋದ ತಿಂಗಳು ನಮ್ಮ ಮನೆಯಲ್ಲಿ ಏನೋ ಹುಡುಕುವಾಗ ನನಗೆ ವಿಲ್ ಪತ್ರ ಸಿಕ್ಕಿದೆ". Further, the DW.1 deposed that "ನಿಮ್ಮ ಅಜ್ಜಿ ಮೃತರಾಗುವ ಸಮಯದಲ್ಲಿ ಯಾರ ಬಳಿ ಇದ್ದರು ಎಂದರೆ, ಅನಾಥಶ್ರಮದಲ್ಲಿ ಮೃತರಾಗಿದ್ದಾರೆ.". Hence it creates the doubt about the execution of the Will by the said S.Puttamma.

36. The Section 68 of the Indian Evidence Act, a Will is not permitted to be used as evidence unless at least one

attesting witnesses has been called for the purpose of proving its execution. One of the attesting witness to the Ex.D21 by name Ramegowda is no more, but the defendants have not called another attesting witness for the purpose of proving its execution.

37. Therefore, the defendants fails to prove the Ex.D21 with attesting witnesses. The Ex.D23 is the palu parikathu Dated 13.06.1997. In the said partition Deed, the suit schedule property is not included. Therefore, no partition was effected among the children of the S.Puttamma in respect of the suit schedule property. Further, the Ex.D1 and D2 are also no way related to the suit schedule property and the same was executed among the children of the late Chandrashekaraiyah.

38. The defendants got marked the plaint, valuation slip, written statement, Issues, Depositions in OS.No.31/2019 as per the Ex.D3 to D8. As per the said documents, the defendant No.11 herein filed a suit for the relief of partition and separate possession against the defendant No.8 to 10 and the said suit is pending for adjudication. But, the subject matter of the aforesaid suit and present suit are entirely different.

39. As discussed above, the suit schedule property is the self acquired property of the said S.Puttamma and the defendants are failed to prove the execution of the Will by the said S.Puttamma. Since the said S.Puttamma is no more, her legal heirs i.e., the plaintiff and defendant No.1 to 7 and late Chandrashekaraiyah are entitled for the equal shares in the suit schedule property. *Hence, this court*

*answered the Issue No.1 and 2 in the **Partly Affirmative** and Issue No.3 and Additional Issue No.1 in the **Negative**.*

ISSUE No.4 & 5 :-

40. As discussed above, the suit schedule property is the self acquired property of the S.Puttamma. Further, the defendants have failed to prove the execution of the Ex.D21. Since, the plaintiff, defendant No.1 to 7 and late Chandrashekaraiyah are being the Class I Legal Heirs of the deceased S.Puttamma, they are entitled for the 1/9th share each in the suit schedule property. The defendant No.8 to 11 are being the Class I Legal Heirs of the deceased Chandrashekaraiyah, they are entitled for the 1/9th share jointly.

41. Further, the plaintiff sought the relief of Mandatory injunction to demolish the building constructed in the suit schedule property. Demolishing a building or

structure before drawing a final decree is against the natural justice, as the constructed portion can be allotted to the person who built it. In the Final Decree proceedings, if the structure violates the rights of the other co-owners, the court has power to order its removal or adjust the shares to compensate for the encroachment. *Hence, this court answered the Issue No.4 in the **Negative** and Issue No.5 in the **Partly Affirmative**.*

ISSUE No.6 :-

42. In view of findings on above issues, this court proceeds to pass the following;

ORDER

The suit of the plaintiff is hereby decreed in part with cost.

The relief of Mandatory Injunction is hereby dismissed.

The plaintiff and defendant No.1 to 7 are entitled for the separate possession of the 1/9th share each in the suit schedule property.

The defendant No.8 to 11 are entitled for the separate possession of the 1/9th share jointly in the suit schedule property.

Draw preliminary decree accordingly.

*(Dictated to the Stenographer directly in computer, revised, corrected by me and then pronounced in the open court on this the **21st day of APRIL, 2026.**)*

(YOGESHA M.R)
PRL.CIVIL JUDGE AND JMFC.,
PERIYAPATNA.

:- ANNEXURES :-**List Of Witnesses Examined On Behalf Of Plaintiff:-**

PW.1 : P.K.GAYATHRI

List Of Documents Got Marked On Behalf Of The Plaintiff:-

Ex.P1 : RTC Extract in respect of Sy.No.83

Ex.P2 : Death certificate of Puttamma

Ex.P3 : Photo

Ex.P4 : CD

Ex.P5toP9 : Five Certified copy of RTC Extracts

Ex.P10 : RTC Extract in respect of Sy.No.83

Ex.P11 : Certified copy of Registered Sale Deed Dated
24.04.1951

Ex.P12to16: Certified copy of Five RTC Extracts in respect of
Sy.No.83

Ex.P17 : Certified copy of Registered Sale Deed Dated
26.12.1946.

List Of Witnesses Examined On Behalf Of Defendants:-

DW.1 : P.C.SHASHI

DW.2 : SRINIVAS

DW.3 : SRINATH

List Of Documents Got Marked On Behalf Of Defendants:-

- Ex.D1 : Certified copy of Registered Relinquishment Deed Dated 28.03.2011
- Ex.D2 : Certified copy of Partition Deed Dated 21.07.2016
- Ex.D3 : Certified copy of plaint in OS.No.31/2019
- Ex.D4 : Certified copy of Valuation Slip in OS.NO.31/2019
- Ex.D5 : Certified copy of Written statement in OS.No.31/2019
- Ex.D6 : Certified copy of Issues in OS.No.31/2019
- Ex.D7 : Certified copy of Deposition of the DW.1 in OS.No.31/2019
- Ex.D8 : Certified copy of Deposition of the DW.2 in OS.No.31/2019
- Ex.D9 : RTC Extract in respect of Sy.No.82/3
- Ex.D10 : RTC Extract in respect of Sy.No.84/2
- EX.D11 : RTC Extract in respect of Sy.No.159/1
- Ex.D12 : RTC Extract in respect of Sy.No.159/2
- Ex.D13 : Copy of Voter List of Periyapatna constituency for the year 2020
- Ex.D14 : RTC Extract in respect of Sy.No.83

- Ex.D15to19: Five photos
Ex.D20 : CD
Ex.D21 : Will Dated 22.12.1992
Ex.D21(a) : Signature of Ramegowda
Ex.D21(b) : Signature of K.L Mariyappa
Ex.D22 : Notarized copy Tractor Installation Certificate
Ex.D23 : Notarized copy of Palu parikattu Dated
13.05.1997

(YOGESHA M.R)
PRL.CIVIL JUDGE AND JMFC.,
PERIYAPATNA.