

KAMS610008942019



**IN THE COURT OF THE 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 **01st day of APRIL, 2026.***

OS.No.99/2019

PLAINTIFFS

- : **1.** Punith, 30 yrs,
S/o Rajappa,
- 2.** Shivakumara, 25 yrs,
S/o Rajappa,

The plaintiffs are
R/at Konasuru Village,
Bettadapura Hobli,
Periyapatna Taluk,
Mysuru District.

*(Represented by Sri.**KAM.**, Adv)*

V/s

DEFENDANTS

- :1.** Shivanna, 63 yrs,
S/o late Somappa,
- 2.** Rajappa, 61 yrs,
S/o late Somappa,

The defendant No.1 & 2 are
R/at Konasuru Village,
Bettadapura Hobli,
Periyapatna Taluk,
Mysuru District.

- 3.** Girijamma, 50 yrs,
W/o Shanthappa,
R/at Galaganakere Village,
Ravanduru Hobli,
Periyapatna Taluk,
Mysuru District.
- 4.** Nagarathna, 44 yrs,
W/o Prabhakara,
R/at Panchavalli Village,
Kasaba Hobli,
Periyapatna Taluk,
Mysuru District.
- 5.** Rajashekhara, 45 yrs,
S/o Shivappa,

- 6.** Shivamurthy, 42 yrs,
S/o Shivappa,

The defendant No.5 & 6 are
R/at Avarthi Village,
Harannahalli Hobli,
Periyapatna Taluk,
Mysuru District.

- 7.** Shivakumara, 43 yrs,
S/o late Channabasappa,

- 8.** Basavaraju, 40 yrs,
S/o late Channabasappa,

- 9.** Manjula, 38 yrs,
D/o late Channabasappa,

The defendant No.7 to 9 are
R/at Konasuru Village,
Bettadapura Hobli,
Periyapatna Taluk,
Mysuru District.

(Dft-1, 3 & 4 Represented by Sri.**GCG.**, Adv)
(Dft-2 & 5 to 9 – **Ex-parte**)

Date of Institution of suit : **28.03.2019**

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

Recording of evidence : **16.08.2021**

Pronouncing of Judgment : **01.04.2026**

Total duration of the suit : **YEAR/S MONTH/S DAY/S**
07 00 05

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

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

The plaintiffs have filed the present suit against defendants for the relief of partition and separate possession in respect of the suit schedule properties.

2. The brief facts of the plaintiffs case is that ;

(a). One Somappa is the grandfather of the plaintiffs and father of the defendant No.1 to 4. The suit schedule properties are the ancestral and joint family properties of the plaintiffs and the defendants and the same was originally standing in the name of the Somappa. After his death, as per MR.No.H17/2016-17, the

Katha of the suit schedule properties were mutated in the name of the defendant No.1 to 4, without the knowledge and consent of the plaintiffs. On 25.01.2019, the plaintiffs requested the defendant No.1 to 4 to give share in the suit schedule properties. However, the defendants declined to effect partition. *Hence, this suit.*

3. After due service of summons, the defendant No.1, 3 & 4 have appeared through their counsel and filed written statement by denying the plaint averments and prayed to dismiss the suit with exemplary cost. In spite of service of summons, the defendant No.2 and 5 to 9 remained absent, hence they were placed Ex-parte.

4. The contention of the defendant No.1, 3 & 4 is that;

(a). The defendant No.1 to 4 are the children of one late Somappa. On 11.03.2019 a partition deed was executed among

the father of the plaintiffs and defendant No.1 to 4 in respect of the land bearing Sy.No.12/6 measuring 0-10 guntas, Sy.No.13/5 measuring 0-15 guntas, Sy.No.12/2 measuring 0-30 guntas and Sy.No.13/12 measuring 0-12 guntas. In this regard, the father of the plaintiffs and defendant No.2 to 4 received a sum of Rs.2,00,000/- towards their share and the item No.2 to 5 of the suit schedule properties were mutated in the name of the defendant No.1. In the said manner, from the date of partition deed, the defendant No.1 is possession and enjoyment of the suit schedule property

(b). The suit is bad for non-inclusion of all joint family properties. The land bearing Sy.No.11/1 measuring 2 acres, 13/9 measuring 0-05 guntas, Sy.No.13/3 measuring 0-04 guntas and Sy.No.12/5 measuring 0-06 were ancestral and joint family properties of the plaintiffs and defendants and the same was not included in the plaint. Moreover, a suit in

OS.No.207/2019 was filed before this court for the relief of partition and separate possession and the same is pending for adjudication. *Hence, prayed this court to dismiss the suit with exemplary cost.*

5. Based on above pleadings and documents adduced by both parties, this court has framed the following issues;

:- I S S U E S :-

1. *Whether plaintiffs prove that, plaintiffs and defendants constitute a Undivided Joint Family ?*
2. *Whether plaintiffs prove that, the suit schedule properties are the ancestral and joint family properties of the plaintiffs and defendants ?*
3. *Whether defendant No.1, 3 & 4 proves that, there is a prior partition between the plaintiffs and defendants as contended in their written statement ?*

4. *Whether defendant No.1, 3 & 4 prove that, suit is bad for non-inclusion of all the joint family properties as contended in their written statement?*
5. *Whether the plaintiffs are entitled for the reliefs as sought in the plaint ?*
6. *What decree or order ?*

6. In order to prove the plaintiffs case, the plaintiff No.2 examined himself as PW.1 and adduced as many as 6 documents as per Ex.P1 to P6. After completion of his chief-examination, the case posted for cross of PW.1 on 06.12.2025, 12.12.2025, 13.01.2026 and 07.03.2026, he did not offer for cross-examination, despite of sufficient opportunity. Hence, on 07.03.2026 the cross of the PW.1 taken as closed. Further, the defendants evidence also taken as closed.

7. Heard the arguments and perused the materials available on record.

8. This court answers on the above issues are hereunder;

ISSUE NO.1	:	NEGATIVE
ISSUE NO.2	:	NEGATIVE
ISSUE NO.3 & 4	:	Does Not Survive For Consideration
ISSUE NO.5	:	NEGATIVE
ISSUE NO.6	:	As per final order for the following;

-. REASONS :-

ISSUE NO.1& 2 :-

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

10. The plaintiff No.2 examined himself as PW.1 and he has reiterated and reaffirmed the stand as taken in the plaint. In support of plaintiffs case, he adduced as many as 6 documents as per Ex.P1 to P6.

11. Before deciding issues, it is pertinent to note that the consequences of events. The plaintiff No.2 examined himself as PW.1 and the evidence of the PW.1 was closed and thereafter the matter was adjourned for several times for cross-examination of PW.1. But, he has not come forward to offer for cross-examination, hence the cross examination of PW1 taken as closed.

12. In the present case, the burden lies upon the PW.1 in proving all the material issues. So there is no question of drawing any adverse inference against the defendants. Here, if

the PW.1 leads sufficient evidence to prove the issues, then he will succeed and if not, he will fail in it.

13. Despite several opportunities granted to PW.1, to tender himself for cross-examination, he failed to appear before this court, his cross-examination is taken as closed. The burden to prove the issue No.1 and 2 is on the plaintiffs, in which he is failed to discharge.

14. A suit cannot be disposed of merely on the basis of pleadings. The parties have to lead evidence to prove their respective pleadings. The averments made in the plaint have to be proved by the plaintiffs by leading evidence in respect of the issues framed. The averments made in the pleadings cannot be accepted without proof, unless the same are admitted by the adverse party. Whatever be the pleadings, it is necessary that the pleadings have to be substantiated by means of evidence. Mere

existence of pleadings, it does not mean proof of the same, since PW.1 did not offer himself for cross-examination despite several opportunities granted to him.

15. In this regard, at this stage for better appreciation, the Order 17 Rule 2 of CPC., extracted as follows:

"(2) Procedure if parties fail to appear on day fixed. Where, on any day to which the hearing of the suit is adjourned, the parties or any of them fail to appear, the Court may proceed to dispose of the suit in one of the modes directed in that behalf of Order IX or make such order as it thinks fit.

Explanation: Where the evidence of a substantial portion of the evidence of any party has already been recorded and such party fails to appear on any day to which the hearing of the suit is adjourned, the Court may, in its discretion, proceed with the case as if such party were present.

(3) Court may proceed notwithstanding either party fails to produce evidence etc.- Where any party to a suit to whom time has been granted fails to produce his evidence, or to cause the attendance of his witnesses, or to perform any other act necessary to the further progress of the suit, for which, time has been allowed, the Court may, notwithstanding such default.-

- (a) if the parties are present proceed to decide the suit forthwith; or
- (b) if the parties are, or any of them is, absent, proceed under rule 2."

The explanation permits the Court in its discretion to proceed with a case where substantial portion of evidence of any party has already been recorded and such party fails to appear on any day to which the hearing of the suit is adjourned.

16. In the instant case, the plaintiffs have sought for relief of partition and separate possession in respect of the suit schedule properties. To prove their averments, the PW.1 does not offer for cross-examination. At this stage, this court referred the decision reported in AIR 1999 SC 1441 between Vidhyadhar Vs. Manikrao and another, wherein Hon'ble Supreme Court was pleased to hold that;

“ Where a party to the suit does not appear into the witness box and states his own case on oath and does not offer himself to be cross

examined by the other side, a presumption would arise that the case set up by him is not correct as has been held in a series of decisions passed by various High Courts and the Privy Council beginning from the decision in Sardar Gurbakhsh Singh v. Gurdial Singh and Anr. This was followed by the Lahore High Court in Kirpa Singh v. Ajaipal Singh and Ors. AIR (1930) Lahore 1 and the Bombay High Court in Martand Pandharinath Chaudhari v. Radhabai Krishnarao Deshmukh AIR (1931) Bombay 97. The Madhya Pradesh High Court in Gulla Kharagjit Carpenter v. Narsingh Nandkishore Rawat also followed the Privy Council decision in Sardar Gurbakhsh Singh's case (supra). The Allahabad High Court in Arjun Singh v. Virender Nath and Anr. Held that if a party abstains from entering the witness box, it would give rise to an inference adverse against him. Similarly, a Division Bench of the Punjab & Haryana High Court in Bhagwan Dass v. Bhishan Chand and Ors. , drew a presumption under Section 114 of the Evidence Act against a party who did not enter into the witness box. The principles laid down in the above ruling are aptly applicable to present case on hand. Even in this case, the plaintiff has chief examined he did not step into the witness box for cross-examination.'

17. Further, this court refer the decision reported in 2018(3) KCCR 2151 in between *Shivagouda Appanna Belavi & Ors. -Vs.- Neelappa Appanna Belavi*, since deceased by LRs., the principle laid down is that;

“Plaintiff not subjecting himself for cross-examination- His evidence (examination-in-chief) has no value in the eye of law- Only course left to Court is to dismiss the suit.”

The above principle is aptly applicable to the present case on hand.

18. A party not entering into the witness box has to suffer the consequences, but at the same time, it is equally true that in any case, the plaintiffs are required to stand on their own legs and cannot take advantage of the weakness of the opposite party. A party claiming equitable relief is required to show the prima-facie case through facts and circumstances of the case,

such party is entitled to relief. The plaintiffs are utterly failed to prove their case.

19. In view of above discussions, the plaintiffs have failed to prove that, the suit schedule properties are the ancestral and joint family properties of the plaintiffs and defendants and they are in joint possession of the same. Therefore, the plaintiffs are not entitle for the reliefs as sought in the plaint, *Hence, this court answered Issue No.1 and 2 in the **Negative.***

ISSUE NO.3 & 4 :-

20. As discussed in the Issue No.1 & 2, the plaintiffs have failed to prove that, suit schedule properties are the ancestral and joint family properties of the plaintiffs and defendants. Therefore, the question of deciding whether the prior partition was effected or not and the suit is bad for non-inclusion of necessary properties does not survive for consideration. Hence, these issues are answered accordingly.

ISSUE NO.5 :-

21. As discussed in the Issue No.1 to 4, the PW.1 did not offer himself for cross-examination and also failed to prove that, the suit schedule properties are the ancestral and joint family properties of the plaintiffs and defendants. Therefore, the plaintiffs are not entitle for the reliefs as sought in the plaint. *Hence, this court answered the Issue No.5 in the **Negative.***

ISSUE NO.6 :-

22. In the light of the above discussions, this court proceed to pass the following;

ORDER

The suit of the plaintiffs is hereby
dismissed with cost.

Draw decree accordingly.

*(Dictated to the Stenographer directly on computer, typed and computerized by him, corrected and then pronounced by me, in the Open Court on this the **01st day of APRIL, 2026.**)*

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

-: ANNEXURES :-

List Of Witnesses Examined On Behalf Of Plaintiffs:

PW.1 : SHIVAKUMARA

List Of Documents Marked On Behalf Of Plaintiffs:

Ex.P1 : RTC Extract in respect of the Sy.No.11/13

Ex.P2 : RTC Extract in respect of the Sy.No.12/2

Ex.P3 : RTC Extract in respect of the Sy.No.12/6

Ex.P4 : RTC Extract in respect of the Sy.No.13/5

Ex.P5 : RTC Extract in respect of the Sy.No.13/12

Ex.P6 : MR.No.H17/2016-17

List Of Witnesses Examined On Behalf Of Defendants: Nil

List Of Documents Marked On Behalf Of Defendants: Nil

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