

**KAMS700010702024**



**KAMS700013442024**



**IN THE COURT OF SENIOR CIVIL JUDGE AT  
T. NARASIPURA.**

**PRESENT**

**SRI. HANUMANTHA G.H.**

B.A.L., LL.M.

SENIOR CIVIL JUDGE, T. NARASIPURA

**R.A. Nos.52 AND 61/2024.**

**DATED THIS 01<sup>st</sup> DAY OF APRIL, 2026.**

**APPELLANTS IN**

**R.A NO.52/2024:**

1. Smt. Chennamma  
D/o Late Puttalingegowda,  
Age: 75 years.
2. Sri. Swamy  
S/o Late Puttalingegowda,  
Age: 56 years.
3. Sri. Ramakrishna  
S/o Late Puttalingegowda,  
Age: 53 years.
4. Sri. Krishnegowda  
S/o Late Puttalingegowda,  
Age: 50 years.

5. Sri. A.P. Ravindra  
S/o Late Puttalingegowda,  
Age: 48 years.
6. Smt. Kamalamma  
D/o Late Puttalingegowda,  
Age: 58 years.  
  
P-1 to 6 are R/at:  
Attahalli village,  
Bannur Hobali,  
T. Narasipura taluk.
7. Sri. Shivalingu  
S/o Late Lakshamma,  
Age: 38 years.
8. Sri. Nagaraju  
S/o Late Lakshamma,  
Age: 40 years,  
  
A-7 and 8 are R/at:  
Nuggehallikoppalu village,  
Bannur Hobali,  
T. Narasipura taluk.
9. Sri. Rangegowda  
S/o Late Mamma,  
Retired R.I.  
Age: 70 years,  
R/at: Yaraganahalli,  
Near Terressian College,  
Raj Kumar Road, 1<sup>st</sup> Cross,  
Mysuru.
10. Sri. Swamy  
S/o Late Mamma,  
Age: 60 years,  
R/at: Attahalli village,  
Bannur Hobali,  
T. Narasipura taluk.

11. Smt. Jayamma  
W/o Late Siddappa,  
Age: 80 years,  
R/at: # 1586,  
Agrahara, Siddappa Squire,  
3<sup>rd</sup> Cross, K.R. Mohalla,  
Mysuru.

(By Sri. A.P. Shreedhara,  
Advocate)

**Vs.**

**RESPONDENTS IN  
RA. NO.52/2024:**

1. M. Ramanna Dead by Lrs.

a). M.R. Badrinath  
S/o Late M. Ramanna,  
Age: 38 years.

b). M.R. Manjunath  
S/o Late M. Ramanna,  
Age: 35 years.

Both are R/at: Attahalli  
village, Bannur Hobli,  
T. Narasipura taluk.

2. Karaganna Dead by Lrs

a). Lokesha  
S/o Late Karaganna,  
Age: 32 years.

b). Abhishek  
S/o Late Mamatha  
Age: 25 years.

- c). Smt. Pooja  
D/o Late Mamatha and  
Late Karaganna,  
Age: 23 years.

2(a) to (c) are R/at:  
Attahalli village,  
Bannur Hobli,  
T. Narasipura taluk.

- d). Smt. Hemalatha Dead by Lrs.

- i). Sri. Y.S. Shekara  
S/o Shivaramegowda,  
Age: 65 years.

- ii). Kum. Sneha  
D/o Late Hemalatha  
Age: 16 years.

- iii). Kum. Sanjana  
D/o Late Hemalatha,  
Age: 14 years.  
ii) and iii) being minors are  
represented by their father  
Y.S. Shekara as guardian.

i) to iii) are  
residing at:  
Yachanahalli village,  
Bannur Hobali,  
T. Narasipura taluk.

- 2(e). Smt. Jyothi  
D/o Late Karaganna,  
Age: 34 years,  
R/at: Thuruganuru village,  
Bannur Hobali,  
T. Narasipura taluk.

## 3. Shivanna Dead by Lrs.

- (a). Smt. Jayamma  
W/o Late Shivanna,  
Age: 60 years.
- (b). Kum. Sheela  
D/o Late Shivanna,  
Age: 28 years.
- (c). Kum. Shilpa  
D/o Late Shivanna,  
Age: 25 years.
- (d). Kum. Shylaja  
D/o Late Shivanna,  
Age: 25 years.
- (e). Smt. Kanchana @ Shilpa  
D/o Late Shivanna,  
Age: 23 years.

3(a) to (e) are R/at:  
Attahalli village,  
Bannur Hobali,  
T. Narasipura taluk.

4. Sri. Papanna  
S/o Late Puttamadegowda,  
Age: 52 years.5. Sri. Krishnegowda  
S/o Late Puttamadegowda,  
Age: 54 years.

6. Smt. Thayamma dead by Lrs.
  - a. Sri. Raju  
S/o Late Sannegowda,  
Age: 52 years.
7. Smt. Ningamma @  
Karagamma  
D/o Late Puttamadegowda,  
W/o Madegowda,  
Age: 80 years.

R-4 to 7 are R/at:  
Attahalli village,  
Bannur Hobali,  
T. Narasipura taluk.

(By Sri. Bhuvanesh, Advocate)

**APPELLANTS IN**  
**RA. NO.61/2024:**

1. M. Ramanna Dead by Lrs.
  - a). M.R. Badrinath  
S/o Late M. Ramanna,  
Age: 42 years.
  - b). M.R. Manjunath  
S/o Late M. Ramanna,  
Age: 40 years.

Both are R/at: Attahalli  
village, Bannur Hobli,  
T. Narasipura taluk.

2. Karaganna Dead by Lrs
  - a). Lokesha  
S/o Late Karaganna,  
Age: 48 years.

- b). Abhishek  
S/o Late Mamatha  
Age: 27 years.
- c). Smt. Pooja  
D/o Late Mamatha and  
Late Karaganna,  
Age: 25 years.

2(a) to (c) are R/at:  
Attahalli village,  
Bannur Hobli,  
T. Narasipura taluk.

- d). Smt. Hemalatha Dead by Lrs.

- i). Sri. Y.S. Shekara  
S/o Shivaramegowda,  
Age: 47 years.

- ii). Kum. Sneha  
D/o Late Hemalatha  
Age: 19 years.

- iii). Kum. Sanjana  
D/o Late Hemalatha,  
Age: 17 years.  
iii) being minor is  
represented by her father  
Y.S. Shekara as guardian.

i) to iii) are  
residing at:  
Yachanahalli village,  
Bannur Hobali,  
T. Narasipura taluk.

- 2(e). Smt. Jyothi  
D/o Late Karaganna,  
Age: 42 years,  
R/at: Thuruganuru village,  
Bannur Hobali,  
T. Narasipura taluk.
3. Shivanna Dead by Lrs.
- (a). Smt. Jayamma  
W/o Late Shivanna,  
Age: 58 years.
- (b). Kum. Sheela  
D/o Late Shivanna,  
Age: 35 years.
- (c). Kum. Shilpa  
D/o Late Shivanna,  
Age: 33 years.
- (d). Kum. Shylaja  
D/o Late Shivanna,  
Age: 31 years.
- (e). Smt. Kanchana @ Shilpa  
D/o Late Shivanna,  
Age: 31 years.
- 3(a) to (e) are R/at:  
Attahalli village,  
Bannur Hobali,  
T. Narasipura taluk.
4. Sri. Papanna  
S/o Late Puttamadegowda,  
Age: 64 years.

5. Sri. Krishnegowda  
S/o Late Puttamadegowda,  
Age: 60 years.
6. Smt. Thayamma dead by Lrs.
  - a. Sri. Raju  
S/o Late Sannegowda,  
Age: 58 years.
7. Smt. Ningamma @  
Karagamma  
D/o Late Puttamadegowda,  
Age: 77 years.

A-4 to 7 are R/at:  
Attahalli village,  
Bannur Hobali,  
T. Narasipura taluk.

(By Sri. Bhuvanesh, Advocate)

**Vs.**

**RESPONDENTS IN**  
**R.A NO.61/2024:**

1. Smt. Channamma  
D/o Late Puttalingegowda,  
Age: 86 years.
2. Sri. Swamy  
S/o Late Puttalingegowda,  
Age: 66 years.
3. Sri. Ramakrishna  
S/o Late Puttalingegowda,  
Age: 63 years.

4. Sri. Krishnegowda  
S/o Late Puttalingegowda,  
Age: 60 years.
5. Sri. A.P. Ravindra  
S/o Late Puttalingegowda,  
Age: 60 years.
6. Smt. Kamalamma  
D/o Late Puttalingegowda,  
Age: 68 years.

R-1 to 6 are R/at:  
Attahalli village,  
Bannur Hobali,  
T. Narasipura taluk.

7. Sri. Shivalinga  
S/o Late Lakshamma,  
Age: 66 years.
8. Sri. Nagaraju  
S/o Late Lakshamma,  
Age: 64 years,

R-7 and 8 are R/at:  
Nuggehallikoppalu village,  
Bannur Hobali,  
T. Narasipura taluk.

9. Sri. Rangegowda  
S/o Late Maramma,  
Retired R.I.  
Age: 68 years,  
R/at: Yaranahalli,  
Near Terressian College,  
Raj Kumar Road, 1<sup>st</sup> Cross,  
Mysuru.

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10. Sri. Swamy  
S/o Late Maramma,  
Age: 65 years,  
R/at: Attahalli village,  
Bannur Hobali,  
T. Narasipura taluk.
11. Smt. Jayamma  
W/o Late Siddappa,  
Age: 63 years,  
R/at: # 1586,  
Agrahara, Siddappa Squire,  
3<sup>rd</sup> Cross, K.R. Mohalla,  
Mysuru.

(By Sri. A.P. Shreedhara,  
Advocate)

Date of filing of appeals

in R.A No.52/2024 : 31.08.2024

in R.A. No.61/2024 : 25.10.2024.

Nature of appeals : Against the judgment and  
the decree of the Court of  
Additional Civil Judge, T.  
Narasipura in O.S No.56/2011  
dated 02.08.2024.

Date of judgment : 01.04.2026.

Total duration : YEARS MONTHS DAYS.

in R.A No.52/2024. 01 07 01

in R.A No.61/2024 01 05 07

**(HANUMANTHA G.H.)**

Senior Civil Judge,  
T. Narasipura.

## **JUDGMENT**

The appellants of R.A No.52/2024 have filed the appeal under Order XLI Rules 1 and 2 of CPC against the judgment and decree of the court of the Additional Civil Judge, T. Narasipura passed in O.S. No.56/2011 dated 02.08.2024 challenging the legality of them rejecting the share in the item No.1 of the suit properties.

**2.** The appellants of R.A No.61/2024 have filed the appeal under Order XLI Rule 1 r/w Section 96 of CPC against the same judgment and decree challenging the legality of them granting the share in the items No.2 to 4 of the suit properties.

**3.** The appellants of R.A No.52/2024 herein are the plaintiffs and the appellants of R.A No.61/2024 herein are the defendants in the suit before the trial court. They are referred in the same rank as they were referred before the trial court.

**4.** The plaintiffs 1 to 6 only filed the suit against the defendants No.1 to 7 for partition and separate possession and also for accounts of profits. Thereafter, the plaintiffs No.7 to 11 came on record. During the pendency of the suit before the trial court, the defendants No.1 to 3 died. The legal representatives of

them were brought on record. The item No.4 of the suit properties was included to the schedule of the plaint.

**5. The facts leading to the appeals are that:-**

One Mogannegowda @ Moganna @ Madaiah is the propositus. He had a wife namely Bettamma. They had two sons namely Puttamadegowda and Puttalingegowda. The plaintiffs No.1 to 6 are the wife and children of the said Puttalingegowda. The defendants are the children of the said Puttamadegowda.

The propositus purchased the items No.1 to 3 of the suit properties on 07.05.1929 and 29.06.1931. He enjoyed them till his death. Hence, the suit properties are ancestral properties of the plaintiffs and the defendants.

An oral partition was taken place between the sons of the propositus relating to the family properties except the suit properties in 1957. The said partition came to be acted upon. The registered mortgage deed dated 27.03.1957 executed by the defendants No.1 to 5 and their father in favour of one Kenchegowda to mortgage their properties also shows that the said partition was acted upon.

Another palu patti came to be executed on 15.02.1987 between the father of the plaintiffs No.2 to 6 and the defendant No.1 relating to other properties. The plaintiffs partitioned their properties on 12.07.2004 allotted to their father in the partition of 1957.

Though the suit properties are the joint family properties of the plaintiffs and the defendants, they were ignored and excluded from partition of 1957 for bonafide mistake. The fact of non inclusion of them came to the notice of the plaintiffs when they got the sale deeds of 1929 and 1931.

The revenue records of the items No.2 to 4 of the suit properties are in the names of the defendants No.3 and 4. The revenue records of the item No.1 of them are still in the name of the previous owner from whom the said Mogannegowda purchased the said property. But, the cultivation of suit properties is with the defendants No.3 and 4. Hence, the plaintiffs filed the suit for partition and separate possession of half share in the suit properties and accounts of profits therein.

**6.** The defendants No.1 to 6 appeared before the trial court through their respective counsel. The defendants No.1 and 3 filed their separate written statements. The defendants No.2, 4 to 6 adopted written statement of

them. After the demise of the defendants No.1 to 3, the legal representatives of them also adopted the said written statement.

**7.** In the written statement, the defendant No.1 specifically contended that the father of him purchased the item No.4 of the suit properties and therefore, it exclusively belongs to the family of the defendants. In the partition, the said property came to the share of the defendant No.1 and therefore, the plaintiffs do not have any right over the said property. Accordingly, the defendant No.1 prayed to dismiss the suit with costs.

**8.** In the written statement, the defendant No.3 admitted the relationship of the parties. He denied other contents of the plaint. He specifically contended that the sons of the propositus orally partitioned all joint family properties including the suit properties in 1957 and accordingly, they started separate cultivation of their properties allotted to them in the partition.

The defendants also partitioned the properties of their father allotted to him in the partition of 1957 after the demise of him. In the said partition, the suit properties came to the shares of the defendants No.3 and 4 and accordingly, the revenue records of them came to be entered to those defendants.

Since the suit properties were already partitioned in 1957, there is no any property for partition. Further, there is no joint status between the plaintiffs and the defendants since severance was taken place in 1957 itself. Thus, the plaintiffs are not entitled to any share in the suit properties.

The deceased defendant No.6 has six children namely Raju, Dhananjaya, Sumithra, Puttaraju, Sudhakara and Shobha. Except the said Raju, the remaining persons are not made as parties to the suit. Thus, the suit is bad for non joinder of them. Further, the claim of the plaintiffs is also barred by limitation. Accordingly, the defendant No.3 prayed to dismiss the suit with exemplary costs.

**9.** On the basis of above pleadings, the trial court framed the following issues and additional issue.

1. Whether the plaintiffs prove that the suit schedule properties are the ancestral properties of plaintiffs and defendants?
2. Whether the plaintiffs are entitled to  $\frac{1}{2}$  share and separate possession

in the suit schedule properties from the defendants No.3 and 4?

3. Whether the plaintiffs are entitled to enquiry for mesne profits?

4. Whether the defendant No.3 proves that in an oral family partition affected between the father of the plaintiffs and the father of the defendants in the year 1957, the suit schedule properties fell to the share of father of defendants as averred in paras No.13 & 14 of the written statement?

5. Whether the plaintiffs are entitled for relief sought?

6. What order or decree?

### **ADDITIONAL ISSUE**

1. Whether the defendant No.1 proves that item No.4 of the suit schedule properties was purchased by father of the defendants by name Puttamadegowda and as such, the

said property exclusively belongs to the family of the defendants and same fell to his share in a family oral partition as averred in additional written statement filed on 12.02.2014?

**10.** The plaintiff No.2 examined himself as P.W.1 and got 30 documents marked as Exs.P.1 to 30 to prove the case of the plaintiffs; the defendant No.2(a) examined himself as D.W.1 and the defendant No.4 examined as D.W.2 and got a witness examined as D.W.3 and got 15 documents marked as Exs.D.1 to 15 to prove the defence of the defendants before the trial court.

**11.** After completion of the evidence and hearing the arguments, the trial court partly decreed the suit and granted the share to the plaintiffs and the defendants in the items No.2 to 4 of the suit properties and rejected the share in the item No.1 of them.

**12.** Against the judgment and decree of the trial court, the appellants of R.A. No.52/2024 have preferred the present appeal on the following grounds.

1. The trial court has wrongly held that the item No.1 of the suit properties belongs to one Basavanahalli

Shettygowda without perusing the sale deed dated 07.05.1929 through which the propositus purchased the said property from the said Basavanahalli Shettygowda and thereby wrongly declined to give share to the plaintiffs in the said property.

2. On the other formal grounds, the appellants have prayed to set aside the judgment and decree of the trial court by allowing the appeal relating to the said property only and prayed to grant 1/5<sup>th</sup> share to them therein also.

**13.** Against the said judgment and decree of the trial court, the appellants of R.A. No.61/2024 have preferred the present appeal on the following grounds.

1. The trial court has erred without framing the issue relating to the point of limitation though the defendants took the defence that the suit is barred by limitation.

2. The trial court has not appreciated the document of mortgage deed dated 27.03.1957 marked as per Ex.P.18 and Ex.D.1 in which the earlier partition of 1957 is clearly evident. The trial court has also not properly appreciated the evidence of D.Ws.1 to 3.

3. The trial court has not considered the principle of law that an oral partition is permissible in Hindus and the trial court has not considered the admission of the

plaintiffs about the fact that the oral partition taken place in erstwhile family has been acted upon.

4. The trial court has wrongly held that the said Basavanahalli Shettygowda is necessary party to the suit only on the basis of the revenue records of the item No.1 of the suit properties. The said observation of the trial court is not supported by complete and proper documents.

5. The trial court has not considered the fact that the items No.2 and 3 of the suit properties fell to the share of the defendants No.3 and 4 in the oral partition and thereby has wrongly held that the said properties are also the ancestral properties of the plaintiffs and the defendants.

6. The trial court has not appreciated the fact as to whether the plaintiffs No.6 to 11 being the children of the second wife of the propositus are entitled to share in the suit properties or not.

7. On the other formal grounds, the appellants have prayed to set aside the judgment and decree of the trial court and dismiss the suit by allowing the appeal.

**14.** The respondents of both appeals have appeared before this court through their respective counsel and contested the appeals.

**15.** I have heard the arguments of both sides and perused the materials on record.

**16.** On the basis of entire materials on record, findings of the trial court, the grounds of appeals and the arguments of both sides, the following points arise for consideration.

1. Whether the trial court is justified in dismissing the suit for the relief of partition and separate possession relating to the item No.1 of the suit properties?
2. Whether the trial court is justified in decreeing the suit for the relief of partition and separate possession relating to the items No.2 to 4 of the suit properties?
3. Whether the judgment and the decree of the trial court call for any interference by this court?

4. What order or decree?

**17.** The answers to the above points are as under:-

- Point No.1 : Affirmative.  
Point No.2 : Negative.  
Point No.3 : Affirmative.  
Point No.4 : As per final order.

### **REASONS**

**18. POINTS NO.1 TO 3**:- They are taken together for common discussion to avoid the repetition of facts and evidence.

**19.** The trial court has held in its judgment that the propositus purchased the items No.1 to 3 of the suit properties on 07.05.1929 and 29.06.1931 as found from the sale deeds marked as per Exs.P.1 and 2 and the father of the defendants purchased the item No.4 of them on 12.04.1950 as found from the sale deed marked as per Ex.P.20; the materials on record including the evidence of D.W.3 shows that the suit properties were not allotted to the share of the father of the defendants and therefore, the defendants cannot claim them as they were allotted to the defendants No.3 and 4 in subsequent partition; further, the materials on record show that the revenue records of the item No.1 of the suit properties are in the name of the said Basavanahalli Shettygowda

and the plaintiffs have not produced any document to show that the said property belongs to the family of them; the said Basavanahalli Shettygowda is necessary party to the suit, in the absence of him, no decree can be passed against the said property; hence, the plaintiffs are not entitled to any share in the said property.

**20.** The trial court has further held that the items No.2 and 3 of the suit properties being purchased by the propositus become the joint family properties of the plaintiffs and the defendants; the name of the defendants No.3 and 4 came to be mutated to the revenue records of the said properties by virtue of Pouthi Katha and not by partition and therefore, the defence of the defendants that those properties came to the shares of them cannot be accepted; hence, both the plaintiffs and the defendants have equal right over those properties.

**21.** The trial court has further held relating to the nature of the item No.4 of the suit properties that the defendants have not produced any document to show that the father of them paid entire sale consideration from his personal income at the time of purchase of the said property by him on 12.04.1950; at the time of purchase of it, he and the father of the plaintiffs No.2 to 6 resided together since the partition was taken place in

1957; hence, the said property was purchased out of the joint family income only; further, the defendants have not proved their defence that the said property came to the share of their father; therefore, it is also liable for partition. Accordingly, the trial court has decreed the suit relating to the items No.2 to 4 of the suit properties and dismissed the suit relating to the item No.1 of them.

**22.** Against the said finding of the trial court, learned counsel for the appellants in R.A. No.52/2024 and the respondents in R.A. No.61/2024 has argued on the basis of materials on record and grounds of appeal that the trial court has not considered the sale deed of Ex.P.1 through which the propositus purchased the item No.1 of the suit properties and has mainly relied upon the revenue records of the said property in which the name of the said Basavanahalli Shettygowda is standing and thereby wrongly held that the plaintiffs are not entitled to share in the said property. Accordingly, learned counsel for the appellants has prayed to reverse the said finding of the trial court and to grant the share in the said property also and to confirm the finding of the trial court relating to other three properties.

**23.** Learned counsel for the appellants in R.A. No.61/2024 and the respondents in R.A. No.52/2024 has

argued on the basis of materials on record and the grounds of appeal that the trial court has not considered the entire materials on record in order to appreciate the case of the parties relating to earlier oral partition and the effect of it; the effect of it clearly shows the entire family properties including the suit properties were divided in 1957 itself between the father of the defendants and the father of the plaintiffs No.2 to 6; the revenue records also show that the suit properties came to be entered to the names of the defendants, particularly the items No.2 and 3 of them to the names of the defendants No.3 and 4; further, the item No.4 of the suit properties being the self acquired property of the father of the defendants was also subject of earlier partition; the trial court having failed to consider the said facts has wrongly decreed the suit relating to the items No.2 to 4 of the suit properties. Accordingly, learned counsel has prayed to reverse the judgment and decree of the trial court.

**24.** He has relied upon the following rulings of Hon'ble Apex Court and Hon'ble High Court of Karnataka in support of his argument.

**A. AIR 2009 SC 1103 (Bachhaj Nahar Vs. Nilima Mandal and another)** on the principle that the

evidence cannot be considered in the absence of pleadings.

**B. 2025 SAR (Civil) 1041 (Deep Nursing Home and another Vs. Manmeet Singh Mattewala and others)** on the principle that the decision of a case cannot be based on the grounds outside the pleadings of the parties and it is the case pleaded that has to be found.

**C. (1953) 1 SCC 414 (Banaraj Alakhdhari Pathak Vs. Ambika Prasad Pathak)** on the principle that the admitted or proven partial partition leads to presumption of division of all properties belonging to joint family.

**D. AIR 2016 SC 2250 (Muddasani Venkata Narsaiah (D) through Lrs. Vs. Muddasani Sarojana)** on the principle that the non testing of witness in the cross examination in correct way leads to acceptance of the case of a party for whom the evidence of the said witness is produced.

**E. Special Leave Petition (Civil) No.2137/2025 dated 02.04.2025 (Smt. Umadevi and others Vs. Sri Anand Kumar and others)** on the principle that the point of limitation assumes importance to govern the

claim of the plaintiffs to the partition when the plea of earlier partition is taken.

**F. 2007 (3) KCCR 2107 (DB) (Puttanna Shetty (Deceased) by Lrs. and others Vs. Padma Shetty (Deceased) by Lrs. and other)** on the principle that an admission of witness particularly in a civil matter dealing with properties has to be clear and it has to read in the light of the pleadings and the other evidence available on record and one stray sentence cannot be picked up for holding against the plaintiff in property matter.

**G. RSA No.859/2015 dated 27.03.2024 (Chadrashekharaiyah Vs. Sri Mallesha and others)** on the principle that the admission of the party about earlier partition assumes importance to determine the claim of the parties for partition and separate possession.

**25.** Before examining the crux of the case, it is necessary to record the admitted facts. **Firstly**, relating to the relationship of the parties, the document of genealogical tree marked as per Ex.P.3 and admission of the defendants establish the fact that the propositus has two sons i.e., Puttamadegowda and Puttalingegowda; the plaintiffs No.1 to 6 are the wife and children of the said Puttalingegowda and the defendants No.1 to 7 are the children of the said Puttamagegowda; Ex.P.3 further

shows that the propositus had two wives namely Bettamma and Deverimma; the said Bettamma is the mother of the said Puttamadegowda and Puttalingegowda; the said Deviramma has four children namely Puttalingamma (dead), Lakshamma (mother of plaintiffs No.7 and 8), Maramma (mother of plaintiffs No.9 and 10) and Jayamma (plaintiff No.11). Thus, it is necessary to hold that there is no dispute as to the relationship of the parties.

**26. Secondly,** relating to the acquisition of the suit properties, the original sale deeds marked as per Exs.P.1 and 2 show that the propositus purchased the item No.1 of them through Ex.P.1 on 07.05.1929 and he also purchased the items No.2 and 3 of them through Ex.P.2 on 29.06.1931. The certified copy of the sale deed marked as per Ex.P.20 shows that the father of the defendants purchased the item No.4 of them on 11.03.1950. P.W.1 also admitted the said facts in his cross examination. Thus, so far as purchase of those properties is concerned, there is no dispute from the side of both parties.

**27. Thirdly,** relating to earlier partition of 1957, the plaintiffs specifically pleaded and deposed that all the family properties except the suit properties came to be

orally divided between the father of the plaintiffs No.2 to 6 and father of the defendants. The defendants also admitted the fact of earlier partition. But, they specifically contended that all family properties including the suit properties came to be divided between them. Thus, it is clear from the versions of both parties that an oral partition came to be taken place between them in 1957 itself.

**28.** It is now necessary to examine the crux of the case. As mentioned above, the suit properties were not subject matter of earlier partition as per the say of the plaintiffs and they were the subject matter of the said partition as per the say of the defendants. In order to prove their respective versions, they let oral and documentary evidence. The defendants also let the oral evidence of D.W.3 in support of their defence.

**29.** In order to examine the said crux of the case, it is necessary to have been perusal of the materials on record including the oral evidence of the parties and witness. P.W.1 let his oral evidence stating the similar contents of the plaint. D.Ws.1 and 2 also let their oral evidence stating the similar defence of the written statement. D.W.3 supported the defence of them in his examination in chief.

**30.** Relating to the nature of the suit properties, admittedly the items No.1 to 3 were purchased by the propositus. He died without any Will or any document in favour of any person relating to those properties. Hence, they become the family properties at the hands of his children upon his demise. Relating to the item No.4 of them, it was purchased in 1950. The severance in the joint family was admittedly taken place in 1957. Thus, the acquisition of the said property by the father of the defendants is nothing but acquisition for the family which was not at all severed in 1950. Thus, the said property also assumed the nature of the family property at the hands of the sons of the propositus.

**31.** But, the question often crops up in the mind of the court is whether the suit properties were the subject matter of earlier partition of 1957 or not. In order to examine the said question, none of the parties placed direct evidence like the mutation records and similar documents to show the properties allotted to the shares of the sons of the propositus in the partition of 1957. It is the oral say of both parties that the partition was taken place in 1957.

**32.** An oral partition means the partition without any document. Such partition is permissible in Hindu Law.

But, in order to give effect to such partition or in order to accept it as the partition like any other general partition, the revenue records showing such partition must be entered into. They have been maintained in the official course of business for long standing years. Further, the parties to the partition should have clear intention in their mind about the actual division of the properties in order to enjoy them separately.

**33.** But, in the present case, no such revenue records particularly mutation entries showing the division of the family properties and details of them with particulars allotted to the sons of the propositus are placed on record. If such records are produced to show the said facts, then the stand of the plaintiffs that the suit properties were excluded in earlier partition would have been cleared. But, absolutely no such documents are on record to have clear picture about the fact in dispute.

**34.** Despite such failure of the plaintiffs to produce the said records, it is necessary to examine as to whether there are any records to throw light on the fact in dispute. In this regard, two documents i.e., the mortgage deed dated 27.03.1957 marked as per Ex.P.18 and Ex.D.2 and unregistered partition deed dated 12.07.2004 marked as per Ex.P.30 throw some light.

**35.** The said mortgage deed shows that the father of the defendants mortgaged his properties after the partition of 1957 between him and his brother. The properties mortgaged therein are Sy.Nos.147/1, 167/2, 167/8, 517/1, 85/5 and 90/3. Thus, the suit properties are not the subject matter of the said mortgage.

**36.** The said partition deed is found to have been taken place among the plaintiffs. It is unregistered one and therefore, it cannot be looked into for any purpose except for collateral purpose i.e., to see the severance of the family. Hence, it can be looked into see the severance of the family of the plaintiffs only. The properties found in Ex.P.30 are Sy. Nos.517/1, 127, 126, 135, 136, 137, 180, 140/9, 156/4, 87/1, 80/2, 86/5, 80/8, 141/3.

**37.** The suit properties are the lands bearing Sy.Nos.137 measuring 12 guntas, 142 measuring 13 guntas, 143 measuring 18 guntas and 156/4 measuring 35 guntas. Ex.P.30 shows that two suit survey numbers i.e., 137 and 156/4 find a place therein. Particularly, Sy.No.137 measuring 23 guntas and Sy.No.156/4 measuring 16.8 guntas are mentioned in Ex.P.30. In the schedule of the plaint, Sy.No.137 measuring 12 guntas and Sy.No.156/4 measuring 31 guntas are mentioned.

Hence, the item No.1 of the suit properties does not tally with the extent of the property found in Ex.P.30. But, the item No.4 of them tallies with the property found in Ex.P.30 since the extent of it is less than extent of 31 guntas found in the schedule of the plaint.

**38.** The document of Ex.P.22/report of R.I, Bannur Hobali, T. Narasipura taluk shows that the villagers of Attahalli village gave report to an extent that the item No.4 of the suit properties came to be purchased by the father of the defendants at the time of existence of earlier joint family; after the demise of him, the said property came to be divided between the defendants and the father of the plaintiffs No.2 to 6 through panchayath palu parikath on 15.02.1987; accordingly, an extent of 15.8 guntas came to the share of the father of the plaintiffs No.2 to 6 and the remaining extent of 15.8 guntas came to the share of the defendants; therefore, the plaintiff No.2, 4 and 5 gave request to enter the names of them to the said extent of 15.8 guntas; accordingly, the notice as per Ex.P.21 in the form No.21 was issued by the village accountant, Attahalli circle.

**39.** Therefore, though the item No.4 of the suit properties came to be purchased in the name of the father of the defendants in 1950 itself and the name of

him came to be entered in the R.T.Cs of the said property marked as per Exs.P.26 to 29, Exs.D.10 to 13, the document of Ex.P.22 clearly establishes the fact that the said property came to be divided between the two branches mentioned above and each branch got 15.8 guntas in item No.4 of them. Therefore, the plaintiffs mentioned the half portion of the said property in Ex.P.30. If the said property was not divided in the partition of 1987 as mentioned above, the half of it does not find a place either in Ex.P.22 or in Ex.P.30.

**40.** Further, it is to be noted that the item No.4 of the suit properties was included to the schedule of the plaint during the pendency of the case. But, the plaintiffs did not plead anything as to the nature of the said property. Thus, there is also lack of pleading to the said property. Hence, any amount of evidence does not have any effect to determine the nature of the said property and also fact as to the division of it in earlier partition. Despite such facts, the division of it in earlier partition is clearly evident. The ratio of the ruling of **Bachhaj Nahar** mentioned above that in the absence of pleading, the evidence produced by the parties cannot be accepted has also supported the above observation. Hence, the case of the plaintiffs cannot be accepted relating to the said property.

**41.** Relating to the items No.2 and 3 of the suit properties, after the purchase of them by the propositus, the name of him came to be entered in form No.6 as found from Exs.P.4 and 5 and also in the hand written R.T.Cs marked as per Exs.P.7 to 11. Thereafter, the names of the defendants No.3 and 4 came to be mutated to the said properties by way of pouthi katha from the name of the propositus as per INH No.18/1999-2000 marked as per Ex.P.6. Then, the names of them came to be entered in the R.T.Cs marked as per Exs.P.12 to 15 and Exs.D.6 to 9.

**42.** Therefore, it is the strong canvass of the side of the plaintiffs that if those properties were really the subject of earlier partition and the subject matter of any of subsequent partition and if they were allotted to the father of the defendants, they could have been entered to the names of the defendants No.3 and 4 by virtue of partition or by virtue of pouthi katha from their father and not by virtue of pouthi katha from the propositus.

**43.** The said fold of canvass of the side of the plaintiffs seems to be correct if at all there was no partition at all in the earlier family. The discussion made above clears that the partition of 1957 and the partition of 1987 were taken place relating to the family properties

including the item No.4 of the suit properties. As admitted by P.W.1 in the cross examination, there is no any document to show the details of the properties which were allotted to the sons of the propositus and that the suit properties were excluded in earlier partition.

**44.** Therefore, mere entry in revenue records of any property as pouthi katha or by way of partition or by way of division or by way of sale or similar entry does not decisive rather they are corroborative only to determine the nature of transaction. When the evidence showing earlier division is sufficient enough to determine the severance in the earlier family, then such revenue entries showing otherwise do not come in any way to defeat the case of the parties about well admitted earlier partition. Thus, mere entry of pouthi katha in Ex.P.6 cannot be given much importance.

**45.** Further the said mutation entry as per Ex.P.6 came to be certified in 1999-2000. But, the plaintiffs are found to have not challenged the said entry before any revenue authority rather they filed the suit before the trial court in 2011. Thus, they have kept quite till 2011 after the effect of the said mutation entry in 1999-2000 itself. There is no proper explanation from the side of the plaintiffs as to why they kept quite till 2011 without questioning the said entry before the revenue authority.

An inaction on the part of them or failure of them to question the said entry raises an inference that they very well know the earlier partition through which the family properties came to be divided. Therefore, they seem to have filed the present suit only on the ground that the sale deeds and the revenue records of the said properties are in the name of the propositus. They are found to have placed their reliance on the said properties only on the said ground in order to claim them even though the partition was taken place in 1957 itself.

**46.** In this regard, the oral evidence of P.W.1 and D.Ws.1 to 3 is crucial. P.W.1 clearly stated in his cross examination that no document is produced to show that the suit properties were excluded in the partition of 1957; further, he does not know the properties which the propositus possessed at the time of said partition and he does not know the details of the properties which came to the shares of the father of the plaintiffs No.2 to 6 and the father of the defendants; no suit is filed to challenge the partition of 1957.

**47.** The cross examination of P.W.1 also shows that he clearly admitted the suggestions that the residential house of the plaintiffs and all family properties came to be divided between the father of him and the father of

the defendants and thereafter, the plaintiffs have been residing separately by performing separate pooja and ceremonies and also been separately enjoying the properties allotted to the share of the father of the plaintiffs No.2 to 6.

**48.** Therefore, it is clear from the admission of P.W.1 that the partition was taken place in the erstwhile family of the propositus consisting of his two sons. But, there is no document or supportive evidence from the side of the plaintiffs to show that the suit properties were excluded from the said partition.

**49.** The cross examination of D.W.1 shows that he does not know as to how the names of the defendants No.3 and 4 came to be entered to the items No.2 and 3 of the suit properties; he admitted about the execution of mortgage deed by the father of the defendants; but he denied the suggestion that the suit properties being not included in the said mortgage were excluded in the earlier partition; however, he admitted that the item No.4 of the suit properties was not included in the said mortgage.

**50.** Therefore, it is clear from the cross examination of D.W.1 that the item No.4 of the suit properties was not the subject matter of mortgage deed executed by the

father of the defendants in 1957. But, the admission of the said fact does not raise any inference as to exclusion of the said property in the partition of 1957 for the simple reason that the said property was subsequently divided in 1987 as discussed above. Hence, the said admission of D.W.1 does not have any value.

**51.** Further, the evidence of D.W.1 shows that he does not know as to how the katha of the items No.2 and 3 of the suit properties came to be entered to the defendants No.3 and 4. It is to be noted from the perusal of entire evidence of D.W.1 that he is legal representative of the deceased defendant No.2 who is the son of the said Puttamadegowda. Therefore, D.W.1 seems to have no primary information about the affairs of the earlier family consisting of the sons of the propositus. Thus, the evidence of D.W.1 does not much help to determine the fact in issue.

**52.** It is the evidence of D.W.2 which has more relevance on the fact in issue since he is the son of the said Puttamadegowda. He completely narrated the defence taken in the written statement in his examination in chief. But, the cross examination of him made by learned counsel for the plaintiffs shows that he does not know the contents of the affidavit filed in lieu of

his examination in chief. Therefore, learned counsel for the plaintiffs did not go for further cross examination of him. In other words, he did not at all test the examination in chief of D.W.2 in which he clearly deposed about the division of all family properties including the suit properties. Therefore, it was the bounden duty of the side of the plaintiffs to question D.W.2 on the fact in issue. But, they failed to do so only for the reason that D.W.2 does not know the contents of his affidavit.

**53.** As mentioned above, D.W.2 being the son of the said Puttamadegowda certainly has primary information about the affairs of the earlier family. If D.W.2 is properly tested in the cross examination from the side of the plaintiffs, some acceptable answers could have been elicited to examine the fact in dispute. But, the failure of the plaintiffs to do so leads to accept the evidence of D.W.2 as it is. Thus, the defence of the defendants needs to be accepted.

**54.** In this regard, it is profitable to mention the ratio of the ruling of **Muddasani Venkata Narsaiah (D) through Lrs** mentioned above wherein it is clearly held that when there is no effective cross examination to the witness on the fact in issue, then the case of the party for whom such witness gave evidence needs to be accepted;

it is for the reason that the rule of putting one's version in cross examination is one of essential justice and not merely technical one.

**55.** Keeping in mind the said ratio of the ruling and failure of the plaintiffs to question the D.W.2 in the cross examination about the case of them, it is clear that the case of the plaintiffs is not tested by posing questions to D.W.2 and thereby they failed to prove their specific case rather the defence of the defendants stands unquestioned.

**56.** Relating to the evidence of D.W.3, he is an independent witness and not a family member of the parties to the suit. He is 84 years old at the time of evidence itself. Hence, he seems to have some personal information about the affairs of the earlier family of the parties to the suit as found from the examination in chief of him. It clearly shows that he supported the defence of the defendants that all the family properties including the suit properties came to be divided in 1957 itself.

**57.** The cross examination of D.W.3 shows that he admitted the suggestion about the relationship of the parties to the suit; he stated that he has knowledge about the details of the properties which were divided between the sons of the propositus; he admitted that the

suit is filed relating to the suit properties which are not divided; but he specifically stated to the suggestion suggesting no division in the suit properties that they were also divided in earlier partition; he also stated that he does not have any property adjacent to the suit properties.

**58.** The entire evidence of D.W.3 clearly shows that he supported the defence of the defendants that the suit properties were also subject matter of earlier partition of 1957. There is one admission of D.W.1 to an extent that the suit is filed relating to the suit properties which are not divided. But, the entire evidence of him shows that the suit properties were also divided in earlier partition since he voluntarily stated to the suggestion suggesting no division in them that they were also divided.

**59.** The said admission of D.W.3 is mainly relied upon by the side of the plaintiffs. But, it is well established principles of law and also the ratio of the ruling of **Puttanna shetty (deceased) by Lrs** mentioned above that one stray or single sentence in the form of admission cannot be picked up for holding against the party in a property matter and therefore, such admission must be clear and read in the light of pleadings and other evidence. Therefore, the reading of entire evidence of

D.W.3 makes it clear that the said admission is not complete rather it is stray one and thus, it cannot be solely relied upon to accept the case of the plaintiffs. Hence, it is very much clear from the evidence of D.W.3 that the suit properties were also divided in the partition of 1957.

**60.** Having considered the above discussion, it is necessary to hold that the items No.2 and 3 of the suit properties came to be divided in earlier partition itself and thereafter, they came to be mutated to the names of the defendants No.3 and 4 as mentioned above. They have also been enjoying those properties and other suit properties as found from the cross examination of D.W.1.

**61.** The case of the plaintiffs that the said properties were not divided could have been accepted it at all they were able to produce the revenue records to show the details of the properties allotted to the sons of the propositus and also produce the supportive materials and also elicit anything from D.Ws.1 to 3 in the cross examination. The failure of them to do so has made to hold that the said properties were also divided.

**62.** Relating to the item No.1 of the suit properties, as mentioned above, it was admittedly purchased by the propositus from one Siddegowda S/o Gattigowda resident

of Basavanahalli village, Bannur Hobali, T. Narasipura taluk through the sale deed/Ex.P.1. But, no document is produced from the side of the both parties to show that the name of him came to be entered in the revenue records of the said property subsequent to Ex.P.1. But, the R.T.Cs of the said property marked as per Exs.P.16, 17 and Exs.D.4, 5 show the name of one Basavanahalli Shettygowda.

**63.** On the basis of the said revenue records, the trial court has come to conclusion that the said Basavanahalli Shettygowda is also necessary party to the suit and no decree for partition can be passed in the absence of him and thereby the trial court has declined to grant the share in the said property.

**64.** After consideration of Exs.P.1, 16, 17 and Exs.D.4, 5, it is clear that the propositus purchased the item No.1 of the suit property; thereafter, the name of him is found to have not been entered in the revenue records of the said property; but the name of the said Basavanahalli Shettygowda came to be entered in the R.T.Cs of the said property. The perusal of the said R.T.Cs does not show the base upon which the name of him came to be entered. There is also no pleading from the side of the plaintiffs as to why the name of the said Basavanahalli Shettygowda came to be entered in the

said property. Since the propositus purchased the said property, mere subsequent revenue entries in the name of others is of no consequence unless such entries are entered as per any title deed.

**65.** But, the said revenue records i.e., R.T.Cs of the item No.1 of the suit properties showing the name of the said Basavanahalli Shettygowda cannot be given much importance as given by the trial court for the reason that the item No.1 of the suit properties is also held as it was the subject matter of earlier partition. In order to support the said finding, the reliance is also placed upon the discussion made supra relating to the items No.2 and 3 of the suit properties.

**66.** Therefore, the above detailed discussion has made it clear that the partition of 1957 divided all the family properties. The suit properties were also subject of the said partition. When there is specific and clear admission from both parties about the said earlier partition, then the presumption or inference that can be certainly drawn is that the properties which are stated to have not be divided were also divided. In other words, admitted or proven partial partition leads to presumption of division of all properties belonging to the joint family. The said presumption can be rebutted by a party

contending other wise that some properties were not divided. But, he has to rebut such presumption by placing sufficient evidence. In order to support the said finding, I have placed reliance upon the ruling of **Banraj Alakhdhari Pathak** mentioned above.

**67.** Thus, the above discussion has made me to draw the following conclusion.

A. The relationship of the parties to the suit is admitted one and there is no dispute to it from the side of the defendants.

B. The severance was taken place in the erstwhile family of the sons of the propositus in 1957 itself through admitted oral partition.

C. All the family properties including the suit properties were divided in the said partition of 1957 of the subsequent partition of 1987.

D. The stand of the plaintiffs that the suit properties were not divided in earlier partition is not established by placing sufficient materials.

E. The failure of the plaintiffs in producing the revenue records showing the details of the properties allotted to the sons of the propositus, the subsequent revenue records of the items No.2 and 3 of the suit

properties in the names of the defendants No.3 and 4, the division of the item No.4 of them in the partition of 1987, the admission of P.W.1 about complete division of the family properties in earlier partition and the failure of the plaintiffs to elicit anything from D.Ws.1 to 3 to support their stand and the evidence of D.W.3 who is independent witness clearly establish the fact that the suit properties were also the subject matter of earlier partitions.

F. The presumption about admitted or proven partition leading to division of all family properties stands not rebutted by the plaintiffs as they failed to produce sufficient materials to rebut the said presumption.

G. The result of the failure of the plaintiffs in proving their case, the materials on record, admission of P.W.1 and the evidence of D.W.3 prove the defence of the defendants that the suit properties were also the subject of earlier partition.

**68.** The above discussion and conclusion has made me to hold that the trial court is incorrect in passing the judgment and decree and thereby granting the share in the items No.2 to 4 of the suit properties. However, the trial court is right in dismissing the claim of the plaintiffs relating to the item No.1 of them. Thus, it is necessary to

reverse the judgment and decree of the trial court relating to the items No.2 to 4 of them and confirm them relating to the item No.1 of them.

**69.** The above discussion, conclusion and findings have made me to answer the **points No.1 to 3** as **affirmative, negative** and **affirmative** respectively. Accordingly, they are answered.

**70. POINT NO.4:-** In view of the findings on the points No.1 to 3, I proceed to pass the following.

### **ORDER**

The regular appeal in R.A. No.52/2024 filed by the appellants under Order XLI Rules 1 and 2 of C.P.C against the judgment and decree of the court of Additional Civil Judge, T. Narasipura in O.S. No.56/2011 dated 02.08.2024 is dismissed with costs.

The regular appeal in R.A. No.61/2024 filed by the appellants under Order XLI Rule 1 r/w Section 96 of C.P.C

against the said judgment and decree of the trial court is allowed with costs.

The judgment and decree of the trial court is set aside.

The suit seeking the relief of partition and separate possession and accounts of profits is dismissed with costs.

Office is to draw a decree accordingly in both appeals.

Office is to keep the original judgment in R.A. No.52/2024 and copy of it in R.A. No.61/2024.

Office is to return the records of the trial court along with copy of the judgment and the decree.

(Dictated to the Stenographer directly on the Computer, typed by him, corrected and then pronounced by me in the Open Court on 01<sup>st</sup> day of April, 2026).

**(HANUMANTHA G.H)**  
Senior Civil Judge,  
T .Narasipura.



(Separate Judgment is passed and pronounced in the open court)

**ORDER**

The regular appeal in R.A. No.52/2024 filed by the appellants under Order XLI Rules 1 and 2 of C.P.C against the judgment and decree of the court of Additional Civil Judge, T. Narasipura in O.S. No.56/2011 dated 02.08.2024 is dismissed with costs.

The regular appeal in R.A. No.61/2024 filed by the appellants under Order XLI Rule 1 r/w Section 96 of C.P.C against the said judgment and decree of the trial court is allowed with costs.

The judgment and decree of the trial court is set aside.

The suit seeking the relief of partition and separate possession and accounts of profits is dismissed with costs.

Office is to draw a decree accordingly in both appeals.

Office is to keep the original judgment in R.A. No.52/2024 and copy of it in R.A. No.61/2024.

Office is to return the records of the trial court along with copy of the judgment and the decree.

Senior Civil Judge,  
T. Narasipura.