

KAMS710001562013



O.S./17/2013

**IN THE COURT OF THE PRINCIPAL CIVIL JUDGE AND
J.M.F.C., AT T.NARASIPURA**

:Present:

*Sri. Sachin H.R., BA.LLB.,
Prl.Civil Judge & J.M.F.C.,
T.Narasipura.*

Dated this 12th day of June, 2026

Original Suit No.17/2013

PLAINTIFFS:

- 1. Smt.Shivananjamma,**
*W/o Late S.Papanna,
Aged about 45 years,*
- 2. Smt.Leelavathi,**
*W/o Late Mallikarjuna @ Soma,
D/o Late S.Papanna,
Aged about 27 years,
R/at House No.7, 3rd Cross,
4th Main, Magadi Main Road,
Agrahara Dasarahalli,
Bengaluru 79.*
- 3. Sri.Mahadevaswamy P.,**
*S/o Late S.Papanna,
Aged about 25 years,*
- 4. Tulasi S.C.,**
*D/o Late S.Papanna,
Aged about 23 years,*

Plaintiff No.1, 3 & 4:

R/at House No.4,
Padma Building Bannahalli Village,
Chandapura Post, Anekal Taluk,
Bengaluru District.

(By Sri.H.N.B.N, Advocate)

V/S

DEFENDANTS : 1. Smt.Marimadamma,
W/o Late M.Shivaiah,
(Since deceased rep., by her Lrs i.e.
the plaintiff and def.No.2 and 3)

2. Smt.Shanthakumari,
W/o Mahadevaiah,
D/o Late M.Shivaiah,
Aged about 40 years,
R/at House No.19, 2nd floor,
Sridhar Building, Vinayaka Nagara,
Hebbagodi, Bengaluru 99.

3. Smt.Renuka,
D/o Late M.Shivaiah,
W/o Suresh,
Aged about 43 years,
R/at House No.90,
T.Bettahalli Village,
Talakadu Hobli,
T.Narasipura Taluk.

(Def.No.1 & 3 By Sri.M.M.S, Adv.,)

(Def.No.2 By Sri.M.N, Adv.,)

Date of Institution of Suit	15.01.2013
Nature of Suit	PARTITION & SEPARATE POSSESSION
Date of Commencement of Recording of evidence	18.11.2015
Date of closing of evidence	21.08.2025

<i>Date on which judgment was pronounced</i>	12.06.2026
<i>Total Duration</i>	<u>Year/s</u> <u>Month/s</u> <u>Days</u> 13 04 28

-Sd/-

(Sachin H.R.)Prl. Civil Judge & J.M.F.C.,
T.Narasipura.**::J U D G M E N T::**

The plaintiffs have filed this suit against the defendants seeking for the relief of declaration to declare that the registered Gift deed dated 12.12.2012 executed by the defendant No.1 in favour of defendant No.3 in respect to the suit schedule item No.3 and 4 properties is not binding upon the share of the plaintiffs and for the relief of partition and separate possession of their legitimate 1/4th share in the suit schedule properties by metes and bounds and for costs of the suit.

2. The brief facts of the plaintiffs' case is as under:

*That the properties bearing (1) **Sy.No.2** measuring **2 acres**, bounded on the East by Temple road, West by property of Konaki Nanjaiah, North by property of Dundu*

Madaiah and South by Kurubalanahundi road, **(2)**
Sy.No.344/1 measuring 0.14 guntas, consisting of sheet house measuring East-West 12 feet and North-South 20 feet, bounded on the East by road, West by property of Chikkaiah, North by landed property of Dundu Madaiah and South by house property of Dundu Madaiah,
(3) Sy.No.5/1 measuring 0.16 guntas, bounded on the East by Temple road, West by property of Doddathayi Nagendra, North by property of forest department and South by landed property of Dundu Madaiah, and
(4) Sy.No.171 measuring 0.38 guntas, bounded on the East by property of Aaradhya, West by property of Post Subbappa, North by property of Narasimaiah and South by property of Dundu Madaiah, all the properties **situated at T.Bettahalli Village, Talakadu Hobli, T.Narasipura Taluk**, are hereinafter referred to as suit schedule item No.1 to 4 properties in this suit.

3. It is forthcoming from the plaint averments that **one deceased M.Shvaiah and the defendant No.1 by name Marimadamma had four children by name**

S.Papanna, Shanthakumari who is the defendant No.2, Nagaraju who died un-married and Renuka who is the defendant No.3. That the plaintiff No.1 is the wife and the plaintiff No.2 to 4 are the children of said deceased S.Papanna who died on 26.07.2009. As such the plaintiffs and the defendants constitute joint Hindu family members.

4. That the suit schedule properties originally belonged to the said deceased M.Shivaiah and the katha of the said properties stood in his name during his life time and after his demise on 14.02.1994, the plaintiffs and the defendants being his legal heirs inherited the suit schedule properties by way of succession and were the joint owners in joint possession of the said properties.

5. Such being the case the katha of the suit schedule properties was mutated into the name of the defendant No.1, who was the eldest member of their family and she had constructed the sheet house measuring East-West 12 feet and North-South 20 feet in the suit schedule

*item No.2 property and the plaintiffs and defendants being the members of the joint family were in joint possession and enjoyment of the suit schedule properties and **the plaintiffs and the defendants are entitled for their equal share in the suit schedule properties.***

6. Such being the case the defendant No.1 having no exclusive right over the suit schedule item No.3 and 4 properties had illegally executed the registered Gift deed dated 12.12.2012 which was registered on 13.12.2012 in favour of the defendant No.3 behind the back of the plaintiffs which is not binding upon the share of the plaintiffs.

7. That the suit schedule properties are the joint family properties of the plaintiffs and the defendants and the plaintiffs are entitled for their 1/4th share in the same and thus they had approached the defendants to effect partition and to allot their share in the suit schedule properties, but the defendants failed to effect partition and allot the share of the plaintiffs. Hence having no other

alternative the plaintiffs have filed this suit for the reliefs as prayed for.

8. After due service of the suit summons the defendants have appeared through their respective counsel and have filed their respective written statement.

9. The defendant No.2 in her written statement has admitted the entire plaint averments and has prayed to decree the suit and to effect partition of the suit schedule properties and to allot her $\frac{1}{4}^{\text{th}}$ share in the suit schedule properties.

10. The defendant No.1 and 3 in their written statement have contended that in the year 1986 oral partition was effected in respect to the entire properties held by the said M.Shivaiah before the elders of the village and in the said partition 2 properties bearing Sy.No.171 measuring 0.15 guntas and Sy.No.159/2 measuring 0.39 guntas had fallen to the share of S.Papanna who is the husband of the plaintiff No.1. Thereafter the said S.Papanna has sold

the said property bearing Sy.No.159/2 measuring 0.39 guntas to different persons i.e., an extent measuring 10 guntas to one Puttamadamma under the registered Sale deed dated 05.06.1995, an extent measuring 9 ¼ guntas to one B.K.Mallaiah under the registered Sale deed dated 05.06.1995, an extent measuring 19 ½ guntas to one Bettamma and Komalamma under the registered Sale deed dated 23.12.1996 and further had mortgaged the property bearing Sy.No.171 measuring 0.15 guntas to one Shivamallu S/o late Nanjaiah and presently the said property is in possession of one Maramma who is the sister of the said Shivamallu.

11. Such being the case the plaintiffs have no manner of right over the suit schedule properties as the husband of the plaintiffs has been given his legitimate share in the year 1986 itself before the elders of the village in the oral partition taken place in the year 1986. Further it is contended that the plaintiffs have not included the property bearing

Sy.No.269/2 measuring 20 guntas in the suit and hence this suit is bad for partial partition.

12. *Further these defendants have denied the plaint averments that the plaintiffs and the defendants are in joint possession and enjoyment of the suit schedule properties and have contended that after the demise of the husband of the defendant No.1 by name Shivaiah, the defendant No.1 succeeded to the estate of the deceased and is in peaceful possession and enjoyment of the suit schedule properties as absolute owner and she has constructed the house in the suit schedule item No.2 property.*

13. *Further it is contended that the defendant No.1 being the top 1 legal heir of deceased Shivaiah has succeeded to the suit schedule properties and having absolute and exclusive right over the said properties has executed the registered Gift deed and registered Will in favour of the defendant No.3 who is her daughter and as such by virtue of the Gift deed and the Will, the defendant No.3 is the absolute owner in possession of the suit*

schedule properties. Such being the case the plaintiffs have no manner of right over the suit schedule properties. Hence the suit filed by the plaintiffs is not maintainable and accordingly prayed to dismiss the suit with costs.

14. *On the basis of the rival pleadings of both the sides, my learned predecessor in office has framed the following:*

ISSUES

- 1.** *Whether the plaintiffs and 2nd defendant prove that the suit schedule properties are ancestral and joint family properties of themselves and defendants?*
- 2.** *Whether defendants No.1 and 3 prove that partition had already taken place among deceased Shivaiah and husband of 1st plaintiff in the year 1986, as averred in para No.2 to 4 of the written statement?*
- 3.** *The plaintiffs prove that the gift deed dated 12.12.2012 executed by 1st defendant in favour of 3rd defendant in respect of item No.3 and 4 of the suit*

schedule properties does not bind to the extent of their share?

- 4.** *Whether plaintiffs are entitled for partition and separate possession of their $\frac{1}{4}^{th}$ share in the suit schedule properties by metes and bounds?*
- 5.** *Whether the plaintiffs are entitled for the relief as prayed for?*
- 6.** *Whether the defendant No.2 is entitled for partition and separate possession of $\frac{1}{4}^{th}$ share in the suit schedule property by metes and bounds?*
- 7.** *What order or decree?*

ADDITIONAL ISSUE

- 1.** *Whether the suit of the plaintiffs for partial partition is not maintainable?*

15. *In order to prove the above issues, the plaintiff No.3 got examined himself as P.W.1 and got marked 20 documents as Ex.P.1 to Ex.P.20 and also examined two witnesses as P.W.2 and P.W.3 and closed their side evidence. On the other hand, the defendant No.3 got*

examined herself as D.W.1 and got marked 13 documents at Ex.D.1 to Ex.D.13 and closed her evidence.

16. *Heard arguments addressed by the learned counsel for the plaintiffs and on the other hand the counsel for the defendant No.1 and 3 have filed his written arguments and also perused the materials available on record.*

17. *My findings on the above issues are as under:*

<i>Issue No.1</i>	<i>:</i>	<i>In the Affirmative</i>
<i>Issue No.2</i>	<i>:</i>	<i>In the Negative</i>
<i>Issue No.3</i>	<i>:</i>	<i>In the Affirmative</i>
<i>Issue No.4</i>	<i>:</i>	<i>In the Affirmative</i>
<i>Issue No.5</i>	<i>:</i>	<i>In the Affirmative</i>
<i>Issue No.6</i>	<i>:</i>	<i>In the Affirmative</i>
<i>Addl.Issue No.1</i>	<i>:</i>	<i>In the Negative</i>
<i>Issue No.7</i>	<i>:</i>	<i>As per the final order for the following:</i>

REASONS

ISSUE No.1 to 4 and 6:

18. *As these issues are inter connected to each other and in order to avoid repetition of facts of the case and for*

better appreciation of evidence on record, I take these issues together for common discussion.

19. *It is the precise case of the plaintiffs that the deceased husband of the plaintiff No.1 and the father of the plaintiff No.2 to 4 by name S.Papanna and the defendant No.2 and 3 are the children of one deceased M.Shivaiah and his wife i.e., the defendant No.1 and as such the plaintiffs and the defendants constitute joint Hindu family members and that the suit schedule properties originally belonged to the said M.Shivaiah who died on 14.12.1994 leaving behind the defendant No.1 to 3 and the the deceased husband of the plaintiff No.1 and the father of the plaintiff No.2 to 4 by name S.Papanna who died on 26.07.2009 and as such the plaintiffs and the defendants jointly succeeded to the suit schedule properties by way of succession and are in joint possession and enjoyment of the suit schedule properties. Such being the case the defendant No.1 solely mutated the katha of the suit schedule properties illegally into her name and though having no exclusive right over the suit schedule item No.3 and 4 properties have illegally executed the*

registered Gift deed dated 12.12.2012 in favour of the defendant No.3 in respect to the said properties which is not binding upon the share of the plaintiffs and the defendant No.2. That no partition is effected between the plaintiffs and the defendants and though the plaintiffs demanded to effect division and allot their $\frac{1}{4}^{\text{th}}$ share in the suit schedule properties, the defendant No.1 and 3 flatly denied to effect partition. Hence this suit for the reliefs as prayed for.

20. The defendant No.2 has verbatim admitted the case of the plaintiffs and has prayed to decree the suit and allot her $\frac{1}{4}^{\text{th}}$ share in the suit schedule properties.

21. On the contrary the defendant No.1 and 3 have not disputed the plaint genealogy and have contended that in the year 1986 oral partition was effected in respect to the entire properties of deceased Shivaiah and 2 properties bearing Sy.No.171 measuring 0.15 guntas and Sy.No.159/2 measuring 0.39 guntas had fallen to the share of the husband of the plaintiff No.1 by name S.Papanna and he has disposed off the said properties during his lifetime. As such

the plaintiffs have no manner of right over the suit schedule properties.

22. *Further it is contended that after the demise of said M.Shivaiah, the defendant No.1 being the top legal heir succeeded to the suit schedule properties and being the absolute owner in possession of the suit schedule properties has bequeathed the suit schedule item No.1 and 2 properties in favour of the defendant No.3 under the registered Will dated 12.12.2012 and further has gifted the suit schedule item No.3 and 4 properties in favour of the defendant No.3 under the registered Sale deed dated 12.12.2012 and thus by virtue of the said registered Will and the registered Gift deed the defendant No.3 is the absolute owner in possession of the suit schedule properties. Thus the plaintiffs and the defendant No.2 have no manner of right over the suit schedule properties. Hence prayed to dismiss the suit with costs.*

23. *The burden of proving the above issue No.1, 3 and 4 is upon the plaintiffs and accordingly in order to prove the said issues the plaintiff No.3 by name Sri.Mahadevaswamy*

got examined himself as P.W.1 and led his examination in chief by way of affidavit and has reiterated the plaint averments. Further in order to substantiate his case has produced in all 20 documents which are marked at Ex.P.1 to Ex.P.20. The **Ex.P.1** is the notarized copy of the Genealogical tree of the family of the plaintiffs and the defendants which is in consonance with the case of the plaintiffs, the **Ex.P.2** is the Death Certificate of M.Shivaiah who is the father-in-law of the plaintiff No.1 and the grandfather of the plaintiff No.2 to 4 and the husband of the defendant No.1 and father of the defendant No.2 and 3 by name M.Shivaiah which discloses that he died on 14.12.1994 as averred in the plaint, the **Ex.P.3** is the Death Certificate of the husband of the of the plaintiff No.1 and the father of the plaintiff No.2 to 4 and the son of the defendant No.1 and the brother of the defendant No.2 and 3 by name Papanna which discloses that he died on 26.07.2009 as averred in the plaint, the **Ex.P.4 and 5** is the R.T.C extract of the suit schedule item No.1 property bearing Sy.No.2 measuring 2 acres out of 120.35.00 acres, situated at T.Bettahalli Village, Talakadu Hobli, T.Narasipura Taluk standing in the name of the defendant No.1 as per

*mutation order passed in MRH 166/2011-12 by way of Pouthi Katha dated 16.08.2012, pertaining to the year 2012-13, the **Ex.P.6** is the R.T.C extract of the suit schedule item No.2 property bearing Sy.No.344/1 measuring 0.14 guntas out of 27 guntas, situated at T.Bettahalli Village, Talakadu Hobli, T.Narasipura Taluk standing in the name of the defendant No.1 as per mutation order passed in MRH 166/2011-12 by way of Pouthi Katha dated 16.08.2012, pertaining to the year 2012-13, the **Ex.P.7** is the R.T.C extract of the suit schedule item No.3 property bearing Sy.No.5/1 measuring 0.16 guntas, situated at T.Bettahalli Village, Talakadu Hobli, T.Narasipura Taluk standing in the name of the defendant No.1 as per mutation order passed in MRH 166/2011-12 by way of Pouthi Katha dated 16.08.2012, pertaining to the year 2012-13, the **Ex.P.8** is the R.T.C extract of the suit schedule item No.4 property bearing Sy.No.171 measuring 0.38 guntas, situated at T.Bettahalli Village, Talakadu Hobli, T.Narasipura Taluk standing in the name of the defendant No.1 as per mutation order passed in MRH 166/2011-12 by way of Pouthi Katha dated 16.08.2012, pertaining to the year 2012-13, the **Ex.P.9** is the*

*R.T.C extract of the suit schedule item No.1 property of the suit schedule item No.1 property bearing Sy.No.2 measuring 2 acres, situated at T.Bettahalli Village, Talakadu Hobli, T.Narasipura Taluk standing in the name of M.Shivaiah, pertaining to the year 2009-10, the **Ex.P.10** is the R.T.C extract of the suit schedule item No.2 property of the suit schedule item No.1 property bearing Sy.No.344/1 measuring 0.14 guntas, situated at T.Bettahalli Village, Talakadu Hobli, T.Narasipura Taluk standing in the name of M.Shivaiah, pertaining to the year 2009-10, the **Ex.P.11** is the R.T.C extract of the suit schedule item No.3 property of the suit schedule item No.1 property bearing Sy.No.5/1 measuring 0.16 guntas, situated at T.Bettahalli Village, Talakadu Hobli, T.Narasipura Taluk standing in the name of M.Shivaiah, pertaining to the year 2009-10, the **Ex.P.12** is the R.T.C extract of the suit schedule item No.4 property of the suit schedule item No.1 property bearing Sy.No.171 measuring 0.38 guntas, situated at T.Bettahalli Village, Talakadu Hobli, T.Narasipura Taluk standing in the name of M.Shivaiah, pertaining to the year 2009-10, the **Ex.P.13** is the **Mutation order passed in MRH 166/2011-12 dated 16.08.2012***

*which discloses that the katha of the suit schedule item No.1 to 4 properties were mutated into the name of the defendant No.1 from the name of M.Shivaiah by way of Pouthi katha, the **Ex.P.14** is the C/c of the registered Gift deed dated 12.12.2012 executed by the defendant No.1 in favour of the defendant No.3 in respect to the suit schedule item No.3 and 4 properties, the **Ex.P.15** is the Encumbrance certificate having entry of the execution of the Ex.P.14, the **Ex.P.16 to 19** are the photographs and the **Ex.P.20** is the C.D.*

***24.** Further the plaintiffs have examined two witnesses by name C.Nagaraju and B.Chennamallaiiah as P.W.2 and 3 who have led their examination in chief by way of affidavit and have deposed that the suit schedule properties are the joint family properties of the plaintiffs and the defendants and that the said properties are not yet partitioned between the plaintiffs and the defendants. But these witnesses have not offered themselves for their cross examination.*

25. *Per contra* in order to prove the issue No.2 and to disprove the claim of the plaintiffs and the defendant No.2, the defendant No.3 got examined herself as D.W.1 and has reiterated her written statement averments and further in order to substantiate her case has produced in all 13 documents which are marked at Ex.D.1 to 13. Among the said documents the **Ex.D.1** is the registered Will dated 12.12.2012 executed by the defendant No.1 in favour of the defendant No.3 bequeathing the suit schedule item No.1 and 2 properties in favour of the defendant No.3, the **Ex.D.2** is the Encumbrance certificate which is marked at Ex.P.15, the **Ex.D.3** is the Mutation Order which is marked at Ex.P.13, the **Ex.D.4** is the RTC extract of the property bearing Sy.No.269 measuring 0.20 guntas out of 4.04 acres, situated at T.Bettahalli village, T.Narasipura taluk standing in the name of M.Shivaiah S/o Karagaiahna Madaiah, the **Ex.D.5** is the R.T.C extract of the suit schedule item No.4 property bearing Sy.No.171 measuring 0.38 guntas, situated at T.Bettahalli Village, Talakadu Hobli, T.Narasipura Taluk standing in the name of the defendant No.1 as per mutation order passed in MRH 166/2011-12 by way of Pouthi Katha dated

16.08.2012, pertaining to the year 2022-23, the **Ex.D.6** is the R.T.C extract of the suit schedule item No.3 property bearing Sy.No.5/1 measuring 0.16 guntas, situated at T.Bettahalli Village, Talakadu Hobli, T.Narasipura Taluk standing in the name of the defendant No.1 as per mutation order passed in MRH 166/2011-12 by way of Pouthi Katha dated 16.08.2012, pertaining to the year 2022-23, the **Ex.D.7** is the R.T.C extract of the suit schedule item No.3 property bearing Sy.No.344/1 measuring 0.14 guntas, situated at T.Bettahalli Village, Talakadu Hobli, T.Narasipura Taluk standing in the name of the defendant No.1 as per mutation order passed in MRH 166/2011-12 by way of Pouthi Katha dated 16.08.2012, pertaining to the year 2022-23, the **Ex.D.8** is the Death certificate of the defendant No.1 which discloses that she died on 14.06.2017, the **Ex.D.9** is the C/c of the registered Gift deed dated 12.12.2012 executed by the defendant No.1 in favour of the defendant No.3 in respect to the suit schedule item No.3 and 4 properties, the **Ex.D.10** is the Encumbrance certificate pertaining to the period 01.04.1980 to 02.05.2013 having entries in respect to the Mortgage deed dated 21.07.1986 in

*respect to the property bearing Sy.No.159/2 totally measuring 0.39 guntas executed by S.Papanna in favour of PLDB T.Narasipura, the registered Sale deed dated 05.06.1995 executed by S.Papanna in favour of Puttamadamma in respect to the property bearing Sy.No.159/2 measuring 0.10 guntas, the registered Sale deed dated 05.06.1995 executed by S.Papanna in favour of B.M.Mallaiah in respect to the property bearing Sy.No.159/2 measuring 0.9¾ guntas and the registered Sale deed dated 23.12.1996 executed by S.Papanna in favour of Bghattamma and Kamalamma in respect to the property bearing Sy.No.159/2 measuring 0.19 ½ guntas, situated at T.Bettahalli village, T.Narasipura taluk, the **Ex.D.11** is the C/c of the Mutation order effected in respect of the registered Sale deed executed by S.Papanna in respect to the property bearing Sy.No.159/2 measuring 0.10 guntas in favour of Puttamadamma, the **Ex.D.12** is the NCR acknowledgment issued by Talakadu Police and the **Ex.D.13** is the Endorsement issued by the Talakadu Police.*

26. Now coming to the above issues, in the case on hand, the plaint genealogy that the husband of the plaintiff No.1 and the father of the plaintiff No.2 to 4 by name S.Papanna and the defendant No.2 and 3 are the children of the defendant No.1 and her husband M.Shivaiah is undisputed fact and further the suit schedule properties originally belonged to the said M.Shivaiah who is the father-in-law of the plaintiff No.1 and grandfather of the plaintiff No.2 to 4 and the husband of the defendant No.1 and father of the defendant No.2 and 3 is also undisputed fact.

27. Further the D.W.1 in the course of her cross examination has clearly admitted that the plaintiff No.1 is her sister-in-law and the plaintiff No.2 to 4 are her brother's children and that the defendant No.2 is her sister and that the suit schedule properties are the ancestral and joint family properties of the plaintiffs and the defendants.

28. Further it is the specific case of the defendant No.1 and 3 who are the mother and sister of the deceased S.Papanna respectively, who is the husband of the plaintiff

No.1 and father of the plaintiff No.2 to 4, that in the year 1986 oral partition was effected between the said M.Shivaiah and his son i.e., S.Papanna and in the said partition two of the properties bearing Sy.No.171 measuring 0.15 guntas and Sy.No.159/2 measuring 0.39 guntas had fallen to the share of said S.Papanna and the said S.Papanna has sold the said properties to different persons and thus as the share of the said S.Papanna is already allotted to him, the plaintiffs have no manner of right over the suit schedule properties. **But unless mere pleadings, the defendant No.1 and 3 have not produced any documents to establish the said fact that the said M.Shivaiah and S.Papanna had effected oral partition in the year 1986 between them and in the said partition the suit schedule item No.4 property bearing Sy.No.171 measuring 15 guntas and property bearing Sy.No.159/2 measuring 0.39 guntas had fallen to the share of S.Papanna as contended in their written statement.**

29. Further the defendant No.1 and 3 have not pleaded anything in respect to the properties so

*allotted to the share of M.Shivaiah in the said partition. Further in the course of cross examination of P.W.1 by the counsel for the defendant No.1 and 3, the P.W.1 has admitted that Shivaiah is his grandfather and Papanna is his father. Further **the P.W.1 has flatly denied the suggestion put to him that his father by name S.Papanna had demanded to allot his share in the year 1985 and accordingly on 06.06.1986 oral partition was effected between Shivaiah and Papanna in the presence of elders and the suit schedule item No.4 property bearing Sy.No.171 measuring 15 guntas and property bearing Sy.No.159/2 measuring 0.39 guntas had fallen to the share of S.Papanna.***

30. Per contra in the course of her cross examination the D.W.1 has pleaded that she has forgotten her written statement averments and that she is not in a position to say between whom the alleged oral partition had taken place in the year 1986.

31. Further the D.W.1 has not produced any documents to show that, whether the said property bearing Sy.No.159/2 measuring 0.39 guntas which was said to be allotted to the share of S.Papanna in the oral partition which took place on 1986, ever stood in the name of M.Shivaiah or his elders at any point of time.

32. Yes, admittedly the property bearing Sy.No.159/2 measuring 0.39 guntas was sold by S.Papanna to different persons as is reflected in the Encumbrance certificate marked at Ex.D.10 and mutation order marked at Ex.D.11. But the D.W.1 has utterly failed to show that the said property bearing Sy.No.159/2 measuring 0.39 guntas and the property bearing Sy.No.171 measuring 0.15 guntas were so acquired by the said S.Papanna in the alleged oral partition as alleged in the written statement filed by the defendant No.1 and 3. Thus the defendant No.1 and 3 have utterly failed to prove the issue No.2 that oral partition had already taken place among the deceased Shivaiah and

the husband of plaintiff No.1 in the year 1986, as averred in para No.2 to 4 of the written statement.

33. *Now coming to the issue No.1, 3, 4 and 6, it is the clear case of the plaintiffs and the defendant No.2, that the suit schedule item No.1 to 4 properties originally belonged to M.Shivaiah and the said fact is very much admitted by the defendant No.1 and 2. Further the P.W.1 in the course of his cross examination has admitted that the suit schedule item No.1 to 4 properties stood in the name of Shivaiah and after his demise the said properties were mutated into the name of the defendant No.1. **Likely the D.W.1 in the course of her cross examination has admitted that the suit schedule item No.1 to 4 properties are their joint family properties which stood in the name of her father and after his demise the said properties were mutated into the name of the defendant No.1 being the eldest member of their family and that all the joint family members are having right over the said properties.***

34. *Further the RTC extracts of the suit schedule item No.1 to 4 properties marked at Ex.P.9 to 12 by the P.W.1*

discloses that the katha of the suit schedule properties undisputedly stood in the name of M.Shivaiah and after his demise on 14.12.12994 as reflected in the death certificate marked at Ex.P.2, the katha of the suit schedule properties were mutated into the name of the defendant No.1 from the name of Shivaiah as per the Mutation order passed in MRH166/2011-12 dated 16.08.2012 marked at Ex.P.13 by way of pouthi katha and accordingly the katha of the suit schedule properties stood in the name of the defendant No.1 as reflected in the RTC extracts marked by the P.W.1 at Ex.P.5 to 8.

35. *As such in the light of the Ex.P.9 to 13, it is crystal clear that the suit schedule properties were originally belonged to M.Shivaiah and that he died on 14.12.1994 leaving behind his wife i.e., the defendant No.1 and his daughters i.e., the defendant No.2 and 3 and his son i.e., deceased S.Papanna, who is the husband of the plaintiff No.1 as his class I legal heirs.*

36. *Such being the case the defendant No.1 has illegally mutated the katha of the suit schedule properties*

solely into her name excluding the other class I legal heirs of deceased M.Shivaiah, who are also entitled for their equal share in the suit schedule properties.

37. Further the death certificate marked by the P.W.1 at Ex.P.3 discloses that the husband of the plaintiff No.1 and the father of the plaintiff No.2 to 4 died on 26.07.2009 leaving behind the plaintiffs as his class I legal heirs and as such the plaintiffs are entitled to the $\frac{1}{4}^{\text{th}}$ share of said S.Papanna in the suit schedule properties. Likely the defendant No.1 to 3 are entitled for $\frac{1}{4}^{\text{th}}$ share each in the suit schedule properties.

38. Such being the case, the defendant No.1 by solely mutating the katha of the suit schedule item No.1 to 4 properties illegally into her name and though she is entitled only to the extent of $\frac{1}{4}^{\text{th}}$ share in the suit schedule item No.1 to 4 properties, having no exclusive right, over the suit schedule properties has illegally executed **the registered Will dated 12.12.2012** marked at Ex.D.1 and has bequeathed the entire extent in the suit schedule item No.1 and 2 properties in favour of the defendant No.3 and further

has illegally executed **the registered Gift deed dated 12.12.2012** marked at Ex.D.9 in respect to the entire extent in the suit schedule item No.3 and 4 properties in favour of the defendant No.3, **which are not at all binding on the share of the plaintiffs and the defendant No.2.**

39. Further though the D.W.1 has not proved the Ex.D.1 as per Section 68 of Indian Evidence Act and Section 63(c) of the Indian Succession Act,1925, on the ground that the plaintiffs have only disputed the exclusive right of the defendant No.1 over the suit schedule properties and have not disputed the execution of the said Will by the defendant No.1 in favour of the defendant No.3 in their pleadings and further to render justice to the real intent of the defendant No.1 who has admitted the execution of the Will and Gift deed by her in favour of the defendant No.3 in the common written statement filed by the defendant No.1 and 3 during the lifetime of the defendant No.1, the said registered Will and registered Gift deed requires no further proof and holds good to the extent of $\frac{1}{4}^{th}$ share of the testator cum donor i.e.,

the defendant No.1 in the suit schedule item No.1 to 4 properties.

40. Hence, on appreciation of the overall evidence placed on record and in the light of Ex.P.1 to Ex.P.20, the plaintiffs have successfully established that the suit schedule item No.1 to 4 properties are the joint family properties of the plaintiffs and the defendants and that the said registered Gift deed dated 12.12.2012 and the registered Will dated 12.12.2012 are not binding upon the shares of the plaintiffs and the defendant No.2 and that the plaintiffs and the defendant No.2 are entitled for their $\frac{1}{4}^{\text{th}}$ share each in the suit schedule properties. Likely the defendant No.3 is entitled to her $\frac{1}{4}^{\text{th}}$ share and in addition the defendant No.3 is entitled to the $\frac{1}{4}^{\text{th}}$ share of the defendant No.1 in the suit schedule properties by virtue of the registered Will and registered Gift deed executed by the defendant No.1 in her favour. Accordingly, the plaintiffs have successfully proved the issue No.1, 3, 4 and 6. **Accordingly, on the basis of the discussions held above I am inclined to answer the**

Issue No.1, 3, 4 and 6 in the Affirmative and Issue No.2 in the Negative.

ADDITIONAL ISSUE No.1:

41. *The defendant No.1 and 2 by causing amendment to their written statement have contended that the property bearing Sy.No.269/2 measuring 0.20 guntas situated at T.Bettahalli village, Talakadu Hobli, T.Narasipura taluk is also the joint family property of the plaintiffs and the defendants which is standing in the name of M.Shivaiah, but the plaintiffs have not included the said property in this suit and hence the suit is bad for partial partition.*

42. *In order to substantiate their case the D.W.1 has marked the RTC extract of the said property at Ex.D.4 which discloses that the property bearing Sy.No.269 measuring 4.04 acres out of which 0.20 guntas, situated at T.Bettahalli village, is standing in the name of the said M.Shivaiah. Per contra the defendants have not cross examined the P.W.1 in this regard and the P.W.1 has nowhere admitted the said case of these defendants. Further the plaintiffs remained*

mum in respect to the said defence put-forth by these defendants.

43. As such in the interest of justice and equity the parties are at liberty to institute separate suit in respect to the said property and the right of the plaintiffs over the said property would be adjudicated upon in the light of the Order 2 Rule 2 of C.P.C. **Hence I am inclined to answer the Additional Issue No.1 in the Negative.**

ISSUE No.5:

44. In view of my findings on the issue No.1 to 4 and 6 as above, on the basis of the discussions held above, the plaintiffs have successfully proved their case and accordingly they are entitled for the relief of partition and separate possession as prayed for. **Hence, I am inclined to answer the Issue No.5 in the Affirmative.**

ISSUE No.7:

45. In view of my conclusion arrived on above Issues, I proceed to pass the following:

ORDER

The suit filed by the plaintiffs is hereby decreed with costs.

It is declared that the registered Will dated 12.12.2012 executed by the defendant No.1 in favour of the defendant No.3 in respect to the suit schedule item No.1 and 2 properties is not binding upon the share of the plaintiffs and the defendant No.2.

Further it is declared that the registered Gift deed dated 12.12.2012 executed by the defendant No.1 in favour of the defendant No.3 in respect to the suit schedule item No.3 and 4 properties is not binding upon the share of the plaintiffs and the defendant No.2.

The plaintiffs No.1 to 4 are entitled for partition and separate possession of their legitimate 1/4th share together in the suit schedule item No.1 to 4 properties by metes and bounds.

The defendant No.2 is entitled for partition and separate possession of her legitimate 1/4th share in the suit schedule

item No.1 to 4 properties by metes and bounds.

The defendant No.3 is entitled for partition and separate possession of her legitimate 2/4th share in the suit schedule item No.1 to 4 properties by metes and bounds.

Partition shall be effected as per Sec. 54 of the C.P.C.

Draw Preliminary Decree accordingly.

In compliance of the directions of the Hon'ble Apex Court in the decision in Kattukandi Edathil Krishnan and another Vs. Kattukandi Edathil Valsan and others reported in 2022 SCC Online SC 737, the Office shall register the F.D.P., U/O 20 Rule 18 of C.P.C., in terms of the preliminary decree drawn, after expiry of appeal period.

(Partly dictated to the stenographer directly on computer and partly typed by me in my laptop and computerized by him, corrected by me, and then pronounced in the open court on this the 12th day of June, 2026.)

-Sd/-

(Sachin H.R.)

*Prl. Civil Judge & J.M.F.C.,
T.Narasipura.*

ANNEXURE**1. List of witnesses examined on behalf of plaintiffs:**

P.W.1 : Sri.Mahadevaswamy
P.W.2 : C.Nagaraju
P.W.3 : B.Channamallaiah

2. List of documents exhibited on behalf of plaintiffs:

Ex.P.1 : Genealogical tree,
Ex.P.2 & 3 : Death Certificates,
Ex.P.4 to 12 : RTCs,
Ex.P.13 : Mutation order,
Ex.P.14 : C/c of Registered Gift Deed
dated 12.12.2012,
Ex.P.15 : Encumbrance Certificate,
Ex.P.16 to 19 : Photos,
Ex.P.20 : CD.

3. List of witnesses examined on behalf of defendants:

D.W.1 : Smt.Renuka

4. List of documents exhibited on behalf of defendants:

Ex.D.1 : Registered Will dated 12.12.2012,
Ex.D.2 : Encumbrance Certificate,
Ex.D.3 : Mutation Register,
Ex.D.4 to 7 : RTC Extracts,
Ex.D.8 : Death Certificate,
Ex.D.9 : C/c of the Registered Gift Deed
dated 12.12.2012,

Ex.D.10 : *Encumbrance Certificate,*
Ex.D.11 : *C/c of Mutation Order,*
Ex.D.12 : *Acknowledgment,*
Ex.D.13 : *Endorsement.*

-Sd/-

(Sachin H.R.)
Prl.Civil Judge & J.M.F.C.,
T.Narasipura.

**Order is pronounced in the open
court (vide separate Judgment)**

ORDER

The suit filed by the plaintiffs is hereby decreed with costs.

It is declared that the registered Will dated 12.12.2012 executed by the defendant No.1 in favour of the defendant No.3 in respect to the suit schedule item No.1 and 2 properties is not binding upon the share of the plaintiffs and the defendant No.2.

Further it is declared that the registered Gift deed dated 12.12.2012 executed by the defendant No.1 in favour of the defendant No.3 in respect to the suit schedule item No.3 and 4 properties is not binding upon the share of the plaintiffs and the defendant No.2.

The plaintiffs No.1 to 4 are entitled for partition and separate

possession of their legitimate 1/4th share in the suit schedule item No.1 to 4 properties by metes and bounds.

The defendant No.2 is entitled for partition and separate possession of her legitimate 1/4th share in the suit schedule item No.1 to 4 properties by metes and bounds.

The defendant No.3 is entitled for partition and separate possession of her legitimate 2/4th share in the suit schedule item No.1 to 4 properties by metes and bounds.

Partition shall be effected as per Sec. 54 of the C.P.C.

Draw Preliminary Decree accordingly.

In compliance of the directions of the Hon'ble Apex Court in the decision in Kattukandi Edathil Krishnan and another Vs. Kattukandi Edathil Valsan and others reported in 2022 SCC Online SC 737, the Office shall register the F.D.P., U/O 20 Rule 18 of C.P.C., in terms of the preliminary decree drawn, after expiry of appeal period.

-Sd/-

**Prl. Civil Judge and J.M.F.C.,
T.Narasipura.**