

KAMS300006622024



**IN THE COURT OF THE PRINCIPAL SENIOR CIVIL JUDGE
AND JMFC AT HUNSUR**

Present: Smt.Anitha, B.A. (Law) L.L.B.,
Prl. Senior Civil Judge & JMFC.,
Hunsur.

Dated this the 25th day of June 2026

OS No.126/2024

Plaintiff: Lakshamma, W/o Late Javarayi,
Aged about 69 years,
R/at Beside Ayyappa Temple,
B.M. Road, Kalkunike, Hunsur Town,
Mysuru District.

(By: Sri.M.Suresh, Advocate)

- V/s -

Defendant: M.D. Mahadevanayaka.,
S/o Late. Doddattammanayaka,
Aged About 58 Years,
R/at Maralayyanakoppalu Village,
Kasaba Hobli, Hunsur Taluk,
Mysuru District.

**(By: Sri.B.S.Yoganandkumar, Advocate,
(Retired from this case))**

1. Date of institution of the suit: 27.05.2024
2. Nature of the suit: For partition and separate possession
3. Date recording of evidence: 11.09.2024

Sd/-
(Anitha)

J U D G M E N T

2. It is the case of the plaintiff that, one Late Doddathammanaika is her father and one Maramma is her mother. Her parents are no more and herself and the defendant are the only children to her parents. The khata of the suit schedule properties are standing in the name of the defendant. The suit schedule properties are the ancestral and joint family properties of herself and the defendant. She has demanded her share with the defendant, but he has refused to allot her share. Further stated the, inspite of panchayath the defendant not allotted her share. As such she has brought the suit against the defendant for the relief of partition and separate possession of her $\frac{1}{2}$ (half) share over the suit schedule properties. Hence, prayed to decree the suit.

3. After filing of the suit this court issued summons to the defendant. In pursuance of service of summons the defendant appeared before the court and filed the written-statement contending that, the suit is not maintainable under law or on facts and also contended that, in the plaint, the plaintiff has not specified the date of death of her parents. The defendant denied that, the suit schedule properties are ancestral and joint family properties. It is his specific contention that, the plaintiff not demanded any share over the suit schedule properties and there is no panchayath held in the presence of elders. The defendant specifically contended at para No.4 of his written-statement that, at the time of marriage the plaintiff has obtained more amount than her share and as such she is not entitled to claim any share over the suit schedule properties. He has further contended that, there is no cause of action to file the suit and the plaintiff has not approached this court with clean hands. The plaintiff is having no possession over the suit schedule properties and she has not included all the family properties as well as the properties sold from the family and not included all the necessary parties. Hence, prayed to dismiss the suit with costs.

4. On the basis of rival pleadings of the parties this court framed the following:

ISSUES

1. Whether the plaintiff proves that the suit schedule properties are the ancestral and Hindu undivided family properties of plaintiff and defendant and they are in joint possession of the said properties?
2. Whether the defendant proves that the plaintiff has received the cash more than her share at the time of his marriage ?
3. Whether the defendant proves that the suit is bad for non joinder of necessary parties and non inclusion of all the properties as contended at para No.7 of his written-statement?
4. Whether the plaintiff proves the cause of action to file the suit?
5. Whether the plaintiff is entitled for the relief of partition and separate possession of $\frac{1}{2}$ (half) share in the suit schedule properties?
6. What order or decree?

5. In order to substantiate the case initially the plaintiff herself stepped into the witness box and examined herself as PW1 and got marked totally five documents as per Ex.P1 to P5. Thereafter, the plaintiff not tendered herself for cross-examination and as such her evidence has been discarded. Thereafter, the plaintiff got examined her GPA holder by name Janardhana as PW2 and got marked six documents as per Ex.P1 to Ex.P6. The defendant though filed the written-statement has not chosen to cross-examine PW1

and not lead his evidence. It is necessary to note that, the learned counsel for the defendant filed memo of retirement on 12.12.2025 and on the said date the defendant prayed time to engage other counsel and thereafter he remained absent. As such there is no defendant evidence.

6. Thereafter heard arguments addressed by learned counsel for the plaintiff and perused the entire case papers. After hearing the arguments and on perusal of the entire case papers, the above issues are answered as hereunder:

Issue No.1: In the Affirmative
Issue No.2: In the Negative
Issue No.3: In the Negative
Issue No.4: In the Affirmative
Issue No.5: In the Affirmative
Issue No.6: As per the final order
for the following:

REASONS

7. **Issue No.1:** The plaintiff specifically stated that, herself and the defendant are the only children to her parents by name Doddathimmanaika and Maramma. It is her specific contention that, the suit schedule properties are the ancestral and joint family properties of herself and the defendant and she has got $\frac{1}{2}$ share over the suit schedule properties and inspite of her demand made with the defendant, he has refused to allot her share. On the other-hand in the written-statement the defendant contended that, the plaintiff has not stated about the exact date of death of her parents. In the

written-statement the defendant has not disputed the relationship. Therefore, it is an admitted fact that the plaintiff and the defendant are the children of same parents and the defendant would have also narrated the date of death of his parents, but he remained silent about the said fact. It is not the case of the defendant that, his parents are alive. The defendant contended that, the suit schedule properties are not the ancestral and joint family properties. He has specifically contended that, the plaintiff is not in possession of the suit schedule properties.

8. In order to prove the case the plaintiff relied upon Ex.P1 to Ex.P6 documents. As already stated above PW2 is the GPA holder of the plaintiff who is none other-than son of the plaintiff. In order to substantiate the fact about the execution of the GPA, PW2 got marked the original GPA as per Ex.P1. In order to prove the existence of the properties PW1 got marked the RTC pertaining to suit schedule item No.1 to 4 properties as per Ex.P2 to Ex.P5. In order to substantiate about existence of suit schedule item No.5 property, PW2 got marked the demand register extract as per Ex.P6. As per Ex.P2 to Ex.P5 the suit schedule item No.1 to 4 properties are standing in the name of the defendant. As per Ex.P6 the suit schedule item No.5 property is standing in the name of father of the plaintiff and the defendant. As per Ex.P2 to Ex.P5 at column No.10 there is reference about MR No.15/95-96. The defendant in

the written-statement denied that, the suit schedule properties are ancestral and joint family properties. However, he has not chosen to cross-examine PW2 and not lead his evidence. His counsel on record has filed memo of retirement and thereafter, the defendant prayed time to engage some other counsel, but he failed to engage other counsel. The defendant in his written-statement contended that, the suit schedule properties are not the ancestral and joint family properties. But his contention remained unsubstantiated. As such it is very much clear that, the suit schedule properties are the ancestral and joint family properties of the plaintiff and the defendant. Accordingly, Issue No.1 is answered in the Affirmative.

9. **Issue No.2 and 3:** Since these issues are interconnected with each and needs commons discussion on the same set of facts and in order to avoid repetition of facts these issues are taken up together for discussion.

In the written-statement at para No.4 and para No.7 the defendant contended as hereunder:

ವಾದಿಯು ತಮ್ಮ ವಿವಾಹ ಸಂದರ್ಭದಲ್ಲಿ ತಮ್ಮ ಭಾಗಾಂಶಕ್ಕೆ ಬರಬೇಕಾದ ಭಾಗಾಂಶಕ್ಕಿಂತ ಹೆಚ್ಚಿನ ಹಣವನ್ನು ವಾದಿಯು ಪಡೆದುಕೊಂಡಿರುವುದರಿಂದ ಮತ್ತೊಮ್ಮೆ ವಿಭಾಗ ಕೇಳುವ ಪ್ರಶ್ನೆಯೇ ಉದ್ಭವಿಸುವುದಿಲ್ಲ.

ವಾದಿಯು ಒಟ್ಟು ಕುಟುಂಬದ ಎಲ್ಲಾ ಆಸ್ತಿಗಳನ್ನು ಹಾಗೂ ಒಟ್ಟು ಕುಟುಂಬದಿಂದ ಮಾರಾಟವಾಗಿರುವ ಇತರೆ ಸ್ವತ್ತುಗಳನ್ನು ಹಾಗೂ ಅಗತ್ಯ ಪಕ್ಷಗಾರರನ್ನು ಈ ದಾವೆಯಲ್ಲಿ ಸೇರಿಸಿರುವುದಿಲ್ಲ. ಈ ದಾವಾ ಪೆಡ್ಡೋಲ್ ಸ್ವತ್ತಿಗೆ

ಸಂಬಂಧಿಸಿದಂತೆ ದಾವೆ ಹೂಡುವುದಕ್ಕೆ ಯಾವುದೇ ವ್ಯಾಜ್ಯ
ಕಾರಣ ಉದ್ಭವಿಸದೇ ಇದ್ದರೂ ಸಹ ವ್ಯಾಜ್ಯ ಕಾರಣ
ಸೃಷ್ಟಿಸಿಕೊಂಡು ಈ ದಾವಾ ತಂದಿರುತ್ತಾರೆ.

10. The 1st contention is that at the time of marriage the plaintiff has received money to the extent of more than her share. This contention taken up by the defendant gives indirect admission that the plaintiff has got share over the suit schedule properties. By way of saying above contention the defendant wants to show that the plaintiff has received her share in the form of money. It is settled principles of law that, the right to immovable properties shall be released by way of executing a registered document. In the written-statement the defendant nowhere stated that, the plaintiff has released her right by way of executing a registered document. In the absence of said document the contention taken up by the defendant that, the plaintiff received her share in the form of money is not sustainable. Further, the defendant in the written-statement contended that, the plaintiff has not included all the properties. Merely saying so is not sufficient to prove that, the suit is bad for non-inclusion of all the properties and non-joinder of necessary parties. The burden is upon the defendant to show the court about the properties left out by the plaintiff and shall also show that, who are the necessary parties who have been left out by the plaintiff. The defendant not cross-examined PW1 and not lead his evidence.

Hence, this court comes to the conclusion that, the defendant failed to prove that, the suit is bad for non-joinder of necessary parties as well as bad for non-inclusion of all the properties. Accordingly, Issue No.2 and 3 are answered in the Negative

11. **Issue No.4:-** In the plaint, at para No.8 the plaintiff alleged that, ಈ ದಾವೆಯನ್ನು ಸಲ್ಲಿಸಲು ವ್ಯಾಜ್ಯ ಕಾರಣವು ಇತ್ತೀಚೆಗೆ ಅಂದರೆ ಈಗ್ಗೆ 6 ತಿಂಗಳಿಂದೀಚೆಗೆ ಉದ್ಭವಿಸಿದ್ದು, ಅಂದರೆ ವಾದಿಯು ತಮಗೆ ಬರಬೇಕಾದ ಭಾಗಾಂಶ ನೀಡುವಂತೆ ಪ್ರತಿವಾದಿಗೆ ಮನವಿ ಇಟ್ಟ ದಿನದಿಂದೀಚೆಗೆ ಮತ್ತು ಪಂಚಾಯ್ತಿ ಮಾಡಿಸಿದಾಗಿನಿಂದ ಪಂಚಾಯ್ತಿಯಲ್ಲಿ ಪ್ರತಿವಾದಿ ದಾವಾ ಷೆಡ್ಯೂಲ್ ಸ್ವತ್ತುಗಳಲ್ಲಿ ವಾದಿಗೆ ವಿಭಾಗ ನೀಡಲು ನಿರಾಕರಿಸಿದಾಗಿನಿಂದ ಈ ದಾವೆ ಸಲ್ಲಿಸಲು ವ್ಯಾಜ್ಯ ಕಾರಣ ಉದ್ಭವಿಸಿರುತ್ತದೆ. The same evidence has been adduced by PW2 in his chief-examination affidavit. The defendant inspite of taken the contention that, there is no cause of action to file the suit, has not chosen to put-forth his defence neither by cross-examining PW1 nor by adducing defendant evidence. It is very important to note that, the cause of action is bundle of facts and it is to be gathered by looking into entire plaint averments. The plaintiff by making several facts in the plaint has shown proper cause of action to file the suit. Accordingly, issue No.4 is answered in the Affirmative.

12. **Issue No.5:-** The plaintiff specifically alleged that, herself and the defendant are the only legal heirs of her parents and further alleged that, her parents are no more. As already stated above it is not the case of the defendant that,

his parents are alive and there is no material before the court to show that, the plaintiff received her share in the form of money. The defendant by saying that, the plaintiff received her share at the time of her marriage in the kind of money indirectly shows admission from the defendant that, the plaintiff has got share over the suit schedule properties. Such being the case the plaintiff is having $\frac{1}{2}$ (half) share over the suit schedule properties. Accordingly, issue No.5 is answered in the Affirmative.

13. **Issue No.6:** In view of the reasons discussed above this court proceeds to pass the following:

ORDER

The suit filed by the plaintiff against the defendant is hereby decreed with costs.

It is held that, the plaintiff and the defendant are having $\frac{1}{2}$ (half) share each over the suit schedule properties.

Draw preliminary decree accordingly.

As per the decision of Hon'ble Supreme Court of India reported in: 2022 SCC Online SC 737 Between: Kattukandi Edathil Krishnan V/s Kattukandi Edathil Valsan dated 13.06.2022 the matter is listed for taking steps under Order 20 Rule 18 of CPC.

Office to list the matter as FDP by giving fresh number in CIS in order to avoid technicality.

(Dictated to the Stenographer, transcribed and computerized by her on the computer, the transcript corrected and pronounced by me in the open court on this the 25th day of June, 2026.)

Sd/-
(Anitha)
Prl. Senior Civil Judge and JMFC.,
Hunsur.

ANNEXURE

List of witnesses examined on behalf of the plaintiff:

PW1 : Lakshamma
PW2 : Janardhana

List of documents marked on behalf of the plaintiff:

Ex.P1 : GPA
Ex.P2 to P5 : RTC
Ex.P6 : Certified copy of demand register extract.

List of witnesses examined on behalf of the defendant: Nil

List of documents marked on behalf of the defendant: Nil

Sd/-
(Anitha)
Prl. Senior Civil Judge and JMFC.,
Hunsur.