

KARC200016532025



Presented on : 05-07-2025
Registered on : 05-07-2025
Decided on : 02-07-2026
Duration :00 yrs, 11 months, 28 days

IN THE COURT OF THE SENIOR CIVIL JUDGE & J.M.F.C.,
DEVADURGA

Present:
Sri.Suresh Annappa Savadi.,B.A., LLB (SPL),
Senior Civil Judge & JMFC, Devadurga.

R.A.No.15/2025

DATED : THIS THE 2nd DAY OF JULY 2026

Appellants:

Smt. Yallamma W/o. Yankoba,
D/o.Mallanna S/o. Hanumanna,
Age: 62 years, Occ: Agri & Household,
R/o. Masidapur village, Tq: Devadurga,
Dist: Raichur.

(By Sri.B.S. Advocate)

--V/s--

Respondents :

1. Smt.Mallamma W/o. Hanumanthappa,
D/o.Mallanna S/o. Hanumanna,
Age: 60 years, Occ: Household,
R/o. Masidapur village, Tq: Devadurga,
Dist: Raichur. Now at H.No.12-10-144,
near Gandhi Chowk, Sukhani colony,
Raichur.

(By Sri.R.K. Advocate)



Nature of the judgment and decree appealed against	:	The appeal against judgment and decree passed by Civil Judge and J.M.F.C. Devadurga in O.S. No.53/2022, dated 11.06.2025.
Date of institution of appeal	:	05.07.2025
Date on which judgment was pronounced	:	02.07.2026
Duration of the appeal	:	Year 00 Month/s 11 Day/s 28

JUDGMENT

The appellant has preferred this appeal by challenging the judgment and decree passed by the Civil Judge and JMFC, Devadurga in O.S.No.53/2022, dated 11.06.2025.

2. The appellant is the defendant before the trial court. The respondent is the plaintiff in the trial court. For convenience sake the ranks of the parties are referred as per their ranks appeared in the trial court.

3) The brief facts of the case:

The plaintiff filed the suit for partition and separate possession against the defendant in respect of land bearing Sy.No.8/2 measuring 12 acre 24 guntas out of which 01 acre 20 guntas in which claiming half share. Further contended that deceased Mallanna S/o. Hanumanna and deceased Bhimanna were the real brothers. Younger brother Bhimanna and his wife



were died issueless. Elder brother Mallanna had 04 sons and 02 daughters. The appellant and respondent are daughters of Mallanna. Further contented that after death of said Bhimanna and his wife about 40 years back partitioned the family properties. In that partition suit land bearing Sy.No.8/2 measuring 12 acres 24 guntas out of which to the extent of 1 acre 20 guntas has allotted to the appellant and plaintiff jointly as their share. Since partition the defendant and plaintiff are enjoying the same. The plaintiff approached the defendant for effecting partition during the last week of June-2022. For that the defendant flatly refused for partition and denied the share of the plaintiff. Hence, plaintiff filed the suit.

4. After service of summons the defendant appeared through counsel and filed the written statement. In the written statement contended that the suit land bearing Sy.No.8/2 measuring 06 acres 04 guntas was the absolute property of Bhimanna S/o. Hanumanthraya. The said Bhimanna and his wife died without issues. The appellant lived with the said Bhimanna and his wife. The said Bhimanna and his wife taken care of defendant as a daughter. So due to love and affection Bhimanna and his wife voluntarily transferred the ownership and possession of the land to the extent of 1 acre 20 guntas in Sy.No.8/E in favour of appellant at the time of her marriage. But, same was not mutated in the name of defendant during the lifetime of Mallanna. In the year 1998 after the death of said Mallanna the above extent of land mutated in the name of defendant through mutation order No.14



dated 11.05.1998. Since date of transfer of ownership, the defendant is the absolute owner and possessor of the suit land. The appellant is the absolute owner and possessor. The plaintiff is not the joint owner and not in possession of the suit land at any point of time. The suit land was not allotted to the plaintiff and defendant jointly as contended by the plaintiff in the plaint. There is no any partition took place and not allotted any share to the plaintiff. The plaintiff is not the joint owner. The defendant taken contention that suit is bad for non-joinder of necessary parties and also contended that suit is bad for non-inclusion of all family properties and non-inclusion of other family properties and partial partition is not maintainable.

5. After considering the rival pleadings of the parties the trial court framed the following issues :

1. Whether plaintiff proves that suit property is an ancestral and joint family property of her and defendant ?
2. Whether the plaintiff proves that she and defendant are in joint possession and enjoyment of suit property ?
3. Whether the plaintiff proves that no partition took place between her and defendant in the suit property by meets and bounds ?



4. Whether the defendant proves that suit of the plaintiff is bad for non-joinder of necessary parties and non-inclusion of all family property?
 5. Whether the defendant proves that suit of the plaintiff is barred by law of limitation?
 6. Whether the defendant proves that this court has no pecuniary jurisdiction to try the suit of the plaintiff ?
 7. Whether the defendant proves that the plaintiff is not paid proper court fee ?
 8. Whether the plaintiff is entitled the share in the suit property ?
 9. What order or decree ?
6. To prove the case plaintiff entered into witness box examined as PW-1 and produced single document which were marked as Ex.P.1 and closed the side. On the other hand, defendant examined herself as DW-1 and produced 23 documents which were marked as Ex.D.1 to 23 and closed the side.
7. After hearing the arguments, the trial court decreed the suit of the plaintiff on 11.06.2025 by allotting half share to the plaintiff in the suit schedule property.



8. Being aggrieved by the judgment and decree the defendant preferred this appeal on the ground that the plaintiff did not place any link document to show that the suit schedule property is the ancestral property of the family of the plaintiff and defendant. The plaintiff only produced single RTC which is standing in the name of defendant to the extent of 01 acre 20 guntas. Hence the plaintiff failed to prove that the suit schedule property is the ancestral property and also contended that the suit is bad for non-joinder of necessary party. As per the plaintiff, the plaintiff and defendant had 05 brothers who are also having share in the property as the Bhimanna's property is to be divided in class-2 heirs among the plaintiff, defendant and their brothers and they were not made as parties and also contended that all the family properties were not included and also in the year 1998 itself the mutation was taken place and now filed this suit for partition which is barred by limitation. On these set of contentions prays to set aside the judgment of the trial court and allow the appeal and dismiss the suit of the plaintiff.

9. After institution of the appeal the notice issued to the respondent. The respondent appeared through counsel.

10. Heard the both side.

11. After carefully reading of the appeal memo, grounds of the appeal memo, grounds of the arguments and trial court records. The following points arise for my consideration: -



1. Whether appellant has made out sufficient grounds to interfere the judgment of their trial court ?

2. What order?

12. My findings on the above points are as under:

Point No.1 : In the Affirmative.

Point No.2 : As per final order for
the following:-

R E A S O N S

13. **Point No.1** - The As per the records, the plaintiff filed the suit for partition and separate possession against the defendant in respect of suit schedule property bearing Sy.No.8/2 measuring 01 acre 20 guntas which was fallen to the share of the plaintiff and defendant jointly in the partition which was taken place about 40 years back. The plaintiff requested to allot her share. For that defendant denied the case of the plaintiff and contended that the suit property is the absolute property of the defendant. The suit property was given by the Bhimanna and his wife at the time of the marriage of the defendant. In the year 1998 mutation was effected and entered the name of the defendant in the RTC in respect of the suit property. The plaintiff is no way concern to the suit property.

14. The plaintiff, to prove the case, entered into witness box, examined herself as PW1 and produced single document which is



marked as Ex.P-1, which is the RTC in respect of suit property. The defendant entered into witness box, examined as DW1 and produced 23 documents, which were marked as Exhibit D1 to D23.

15. After going through the records, the plaintiff filed the suit stating that the suit schedule property is the ancestral and joint family property of the plaintiff and defendant. The partition had taken place about 40 years back, in the said partition the suit property fallen to the share of the plaintiff and defendant jointly. To prove the said contention did not placed any material evidence. The plaintiff in the plaint shown the genealogy as per the same the common ancestor Hanumanna had two children by name Mallanna and Bheemanna. Mallanna is the father of the plaintiff and Bheemanna and his wife Nagamma died issueless and the plaintiff and defendant being the sisters claiming right over the property of Bheemanna as the said property allotted to the plaintiff and defendant in the partition which was taken place 40 years back. In the cross examination the PW.1 specifically deposed that the common ancestor Hanumanna had 05 children by name Gangappa, Mallappa, Ammanna, Sidrama and Bheemanna. Out of them said Bheemanna had no issues. This itself shows that the plaintiff has suppressed the material fact about the family tree. The defendant in this appeal taken contention that suit is bad for non-joinder of necessary party and non-inclusion of other family properties. But the said contention was not taken by the defendant in his written statement before the trial court. The



defendant had not taken such contention in the trial court. Hence he cannot take such contentions in the appellate stage. As per the documents produced by the defendant which is marked as Ex.D.1 which mutation No.14. As per the same the property of Bheemanna divided among the son of Gangappa and sons of Sidramappa and to the defendant. The said document was marked on 16.11.2024. The plaintiff had full knowledge about the other brothers of the father of the plaintiff. The plaintiff claiming the share in the property of deceased Bheemanna who died issueless. As per the same all the brothers of deceased Bheemanna are the legal heirs. But the plaintiff did not shown all the legal heirs in the family tree. The plaintiff had 05 brothers and they were shown in the genealogy but they were not made as parties to the suit. In the evidence the PW.1 contended that the plaintiff and defendant could not get any share in the property of their father in the partition which was taken place about 40 years back among the brothers of the plaintiff and defendant only. The plaintiff did not made any effort to implead the necessary parties to the suit in the trial court and also in this court. Hence it clearly shows that the plaintiff had not approached with clean hands. To prove the contention of the plaint the plaintiff did not placed material document considering the same the trial court ought to have dismissed the suit. Hence it is necessary to set aside the judgment of the trial court. Hence interference of this court is necessary in the judgment of the trial court. Hence this court is of the opinion that the defendant has made out sufficient grounds to



set aside the judgment of the trial court. Hence this court answered point No.1 in the affirmative.

16. **Point No.2:** For the reasons stated in the above point no.1, this court proceed to pass the following;

O R D E R

The appeal filed by the appellant/defendant U/o.41 rule 1 and 27 of C.P.C is hereby allowed with costs.

The judgment and decree of the trial court in O.S.No.53/2022 dated 11.06.2025 passed by the Civil Judge and JMFC, Devadurga is set aside.

The The suit of the plaintiff is dismissed.

Draw decree accordingly.

Office is directed to send the trial court records along with copy of this judgment immediately.

(Dictated to the stenographer transcribed, computerized and printout taken by him, corrected and then pronounced by me in the open court on this the 2nd day of July 2026).

(Sri.Suresh Annappa Savadi)
Senior Civil Judge and JMFC,
Devadurga.