

KARC200002412016



[C.R.P. 67]

Govt. of Karnataka

Form No.9 (Civil)
Title Sheet for
Judgment
In suits
(R.P. 91)

**TITLE SHEET FOR JUDGMENT IN SUITS
IN THE COURT OF SENIOR CIVIL JUDGE AND
J.M.F.C. DEVADURGA.
AT: DEVADURGA.**

Dated: On this the 29th Day of November 2022.

Present Before SRI. NAGESH MURTHY B.K.

B.A., L.L.M.

SENIOR CIVIL JUDGE AND J.M.F.C. DEVADURGA.

**Original Suit No.15/2016
(Old No.49/2010)**

Plaintiff: Smt.Gangamma W/o Mallikarjun,
Aged about 58 years, Occ: Household,
R/o Yadagir, Dist. Yadagir.

(By Sri. S.K.P. Advocate)

//Versus//

Defendants:

- 1) Rachanagouda S/o Ganganagouda,
Dead by his L.Rs.
- 1.a) Smt.Budemma W/o Late Rachanagouda,
Aged about 51 years, Occ: Household,

R/o Honnahatagi village,
Tq.Devadurga, Dist. Raichur.

(By Sri. H.M. Advocate)

- 1.b) Sridevi D/o Late Rachanagouda W/o Basavaraj,
Aged about 30 years, Oce: Household,
R/o Kadloor village, Tq. & Dist. Raichur.
(Exparte)

- 1.c) Smt.Gangamma D/o Late Rachanagouda
W/o Sharanabasava,
Aged about 28 years,Occ: Household,
R/o Nagadadinni village,
Tq:Devadurga, Dist: Raichur.
(By Sri. H.M. Advocate)

- 1.d) Basangouda S/o Late Rachanagouda,
Aged about 26 years, Occ: Agriculture,
R/o Honnatagi village,
Tq.Devadurga, Dist, Raichur.

- 1.e) Gangangouda S/o Late Rachanagouda,
Aged about 24 years, Occ: Agriculture,
R/o Honnatagi village, Tq.Devadurga, Dist. Raichur.

- 2) Basanagouda S/o Rachanagouda,
Age 23 years, Occ: Agriculture,

- 3) Ganganagouda S/o Rachanagouda,
Age 20 years, Oce: Agriculture,
All R/o Honnatagi village, Post Bommanal,
Tq.Devadurga, Dist. Raichur.

(By Sri.V.G. Advocate)

- 4) Virupamma @ Kalpalatha W/o Anand Kumar,
Age Major, Occ: Household,
R/o Gopi Shetty Nilaya, H.No.2-2-442,
Mantralayam Road, Sathyanath Colony, Raichur.

(By Sri. B.H.P. Advocate)

- 5) Varadraj S/o Siddanagouda,
Age 50 years, Occ: Agriculture,
R/o Honnatagi village, Tq.Devadurga.
- 6) Malakendrayya S/o Amaregouda,
Age 52 years, Occ: Agriculture,
R/o Honnatagi Tq.Devadurga.
(By Sri. M.M. Advocate)
- 7) Huligemma W/o Sabanna,
Age 37 years, Occ: Household,
R/o Honnatagi Tq.Devadurga.
- 8) Bhimappa S/o Hanumantha,
Age 34 years, R/o Honnatagi Tq.Devadurga.
- 9) Sharanappa S/o Hanumantha,
Age 36 years, R/o Honnatagi Tq.Devadurga.
(By Sri. M.G. Advocate)

Date of filing of the suit	:	07-04-2010
Date of registration of the suit	:	07-04-2010
Nature of the suit	:	Partition and separate possession.
Date of the commencement of evidence	:	14-10-2011
Date of closure of evidence	:	27-02-2015
Date of judgment	:	29-11-2022
Total duration	:	Year/s month/s day/s 12 07 22

(Nagesh Murthy B.K.)
B.A. L.L.M.
Senior Civil Judge and JMFC,
Devadurga, Raichur.

JUDGMENT

The plaintiff has filed this suit against the defendants for the relief of partition and separate possession by claiming 1/3rd share in the suit schedule properties, and for appointment of court commissioner for effecting 1/3rd share for plaintiff in the suit schedule properties and the registered sale deeds shown in the schedule-II are to be declared as null and void to the extent of plaintiff share as the same are not binding to the plaintiff and for cost of the suit.

II) The brief facts of case of the plaintiff is as under:

The plaintiff is the real sister of defendant No.1 and defendant No.4 and defendant No.2 and 3 are the sons of defendant No.1. The plaintiff is one of the joint family member seeking 1/3rd share in the suit schedule properties which are the agricultural lands, all the lands are situated at Honnatagi village of Devadurga Taluka of Raichur District. The plaintiff and defendant No.4 are the full sisters of defendant No.1 and

all the children of deceased Ganganagouda, originally all the suit schedule properties are standing in the name of Gouramma who was the grand-mother of plaintiff and defendant No.1 to 4. The suit schedule properties are the ancestral properties came from fore fathers. Originally suit schedule properties are standing in the name of one Rachanagouda who died long back. After his death the suit schedule properties are transferred in the name of Gouramma by way of succession. The plaintiff, defendant No.1 and 4 are the co-parceners. There was no partition effected among the plaintiff and defendants at any point of time. After the death of Gouramma the suit schedule properties are transferred in the name of defendant No.1 to 3 without giving any share to the plaintiff and also for defendant No.4 Virupamma. The plaintiff being full sister of defendant No.1 have got definite share in the suit schedule properties. After the amendment of the Hindu Succession Act, the plaintiff have got equal share in the suit schedule properties. She is entitle for 1/3rd share in

the suit schedule properties. After the death of Gouramma behind the back of the plaintiff and defendant No.4 the defendant No.1 to 3 got mutated their names concerned revenue records depriving the right and interest of the plaintiff share. Apart from the above transfer the defendant No.1 to 3 in turn sold some of the suit schedule property in favour of the purchasers. The land bearing Sy.No.32 totally measuring 178 acres 32 guntas out of which 9 acres 22 guntas of land towards southern side, was sold by Basanagouda i.e. defendant No.2 in favour of Varadraj S/o Siddanagouda through registered sale deed bearing document No.2957/2008-09 dated:21-11-2008. Again in the same Sy.No.32 the defendant No.2 sold to the extent of 6 acres towards southern side in favour of Malkendrayya S/o Amaregouda through registered sale deeds are made behind back of the plaintiff without any intimation and consent and also sold the land bearing Sy.No.86 totally measuring 14 acres 20 guntas out of which 5 acres 30 guntas towards southern

side in favour of Smt. Huligemma W/o Sabanna through registered sale deed document No.868/2001-02 dated:18-03-2002. The defendant again sold in the land bearing Sy.No.87 totally measuring 20 acres 33 guntas out of which 08 acres 30 guntas towards southern side in favour of Bhimappa S/o Hanumantha through sale deed bearing document No.869/2001-02 dated:18-03-2002. The defendant No.1 also sold in suit schedule property land bearing Sy.No.88 which is totally measuring 21 acres 15 guntas out of which 09 acres 15 guntas towards souther side in favour of Sharanappa S/o Hanumantha through registered sale deed bearing document No.867/2001-02 dated:18-03-2002. All the said sale deeds are behind the back of the plaintiff and defendant No.4 without their consent the sale deed executed by defendant No.1 to 3 the plaintiff and the same may be declared as null and void to the extent of her share. After the death of Rachanagouda and his wife Gouramma, the plaintiff being the coparcener, naturally succeeds to her 1/3rd share together

with the defendant No.1 and 4. The plaintiff is in joint and constructive possession over the suit schedule properties ever since from the death of Gourama and Rachanagouda. The plaintiff being the class-I heir having equal right, interest over the suit schedule properties asked the defendant No.1 to give her share in the suit schedule properties. The defendant No.1 denies giving of any share in the suit schedule properties. There was a panchayath before the elders of the locality on various occasions to settle the matter. But the defendant No.1 denied for effect partition. Under the circumstances the partition of the suit schedule properties become inevitable in the 1st week of February 2010, there was again meeting of the elders and relatives in order to resolve the dispute and to give share to the plaintiff. But there is no fruitful result in the meeting. The defendant No.1 is not interested to give any share to the plaintiff. He flatly refused for legitimate and legal share of the plaintiff under the said circumstances the above suit came to be filed.

III) In pursuance of service of summons issued, defendants have appeared before the court through their counsels and filed their written statements.

IV) The written statement averments of the defendant No.1 is as under:

The defendants No.1 contended that suit of the plaintiff is not maintainable either in law or on facts, the plaintiff has not approached the court with clean hands and the suit is not properly valued and court fees paid by the plaintiff is insufficient, suit is barred by Law of Limitation. And contended that plaintiff has no locus standi to claim for partition for 1/3rd share in schedule No.1 suit schedule properties and his relationship is admitted and denied that the suit schedule properties are standing in the name of Gouramma i.e. grand-mother of plaintiff and defendant No.4 and schedule properties are ancestral properties from fore fathers are denied. In fact item No.12 to 14 in the schedule

No.1 of suit schedule properties were pertaining to the late Gangana Gowda the father of plaintiff and defendant No.1 and 4 above said Gangan Gowda in the year 1973 voluntarily release his all rights and possession over the above said properties, consequently defendant No.1 entered in to the possession. The said fact is suppressed by the plaintiff. During the said period the plaintiff assailed and agitated the acquired rights to the defendant No.1 over the items No.12 to 14 of the suit schedule properties by the instigation of her husband and other personal vested persons, consequently the father of the plaintiff, defendant No.1 and 4 had pacified the plaintiff and given the huge amount and ornaments to the plaintiff as her share which was conceded by the plaintiff during the said period. Since then the possession and enjoyment of the defendant No.1 over the suit schedule properties are peacefully settled without any hindrance by paying the revenue to Government. The R.O. of item No.12 in the schedule No.1 of the suit schedule properties are produced

the ROR of item No.13 and 14 are produced and admitted that on 12-01-1987 the father of the plaintiff, defendant No.1 to 4 demised, in the mean time, the plaintiff once again with defendant No.4 started to demand the share of defendant No.4 over the item No.12 to 14 of the suit schedule properties, but all their demands categorically denied by defendant No.1 in the mean time, the plaintiff and defendant No.4 were held the meeting in presence of elders and well-wishers where in to settle their dispute and share of the defendant No.4 by the timely intervention of the grand-mother of the defendant No.1 and by voluntarily release of her all rights and possession over the item No.10 of the suit schedule property, consequently the efforts of the plaintiff and defendant No.4 came to an end and admitted that on 14-01-1990 the defendant No.1 called the plaintiff, defendant No.1 and 4 on the auspicious festival of Sankranthi in the mean time the plaintiff by taking un-due advantage of the innocence and love and affection of the defendant No.1 over them, the plaintiff and defendant No.4

once again demanded of their share over the item No.12 to 14 of the suit schedule properties in the mean time looking to adamant ill will attitudes of the plaintiff and defendant No.4, the defendant No.1 after exhausting his all patience categorically informed to the plaintiff and defendant No.4 that he had ousted and excluded the rights, shares and interest of the plaintiff and defendant No.4 in manner over the item No.12 to 14 of the suit schedule properties further he stated them that in the event if the plaintiff and defendant No.4 initiated any of the legal actions against him, he will ready to fact the same by defense, in the mean time, the plaintiff and the defendant No.4 also informed that defendant No.1 that they will initiate the legal actions against the defendant No.1 within a short period, consequently since on the above date the possession and enjoyment of the defendant No.1 over the above properties turned in to hostile against the plaintiff and defendant No.4 further the time being the defendant No.1 has perfected his title adverse possession. The defendant No.1 is

hereby reserving his all acquired rights over the above properties constrained to reply the frivolous contents of the suit filed by the plaintiff. The contents of plaint para No.5 are denied as false and baseless, the same are away from the true facts, as such, the plaintiff not entitled to claim by partition over the entire item No.1 to 14. In fact item No.1 to 11 of suit schedule properties were belongs to the grand-mother of the defendant No.1 the same were self-acquired by her, further as an absolute owner thereof issueless and love and affection over the great grand sons i.e. defendant No.2 and 3 on 11-05-2000, the grand-mother of defendant No.1, i.e. Gouramma had executed legal succession deed in favour of defendant No.2 and 3 consequently defendant No.2 and 4 had become the owners of the said properties except item No.10, since it was given to the defendant No.4. As such the contentions of the plaintiff that, after the death of Gouramma the suit schedule properties are transferred in the name of defendant No.1 to 3 without giving any share to the plaintiff and also to the

defendant No.4 virupamma and the plaintiff being full sister of defendant No.1 have got definite share in the suit schedule properties after the amendment of Hindu Succession Act, the plaintiff have got equal share in the suit schedule properties and accordingly she is entitle to 1/3rd share in the suit schedule property are denied as false and baseless. The plaint averments para No.6 are denied as false and baseless and contended that, in fact, the plaintiff and defendant No.4 were very well know the said transitions and on the basis of legal succession executed by the late. Smt. Gouramma, the defendant No.2 and 3 had become the owners of the item No.1 to 9 and 11 of the suit schedule properties and similarly, the defendant No.1 had become owner of the item No.12 to 14 of the suit schedule properties on the basis of release of rights by his father and allotment of share of the plaintiff in mode of amount and ornaments, further, when the defendant No.4 took the item No.10 of the suit schedule properties from the hands of late Smt. Gouramma on 12-01-1987, as such entire

transactions made by the defendant No.1 to 3 according to schedule II are lawfully and the same are binding upon the plaintiff, consequently, neither plaintiff nor defendant No.4 have no right to claim any relief against the defendants. It is false to state that after the death of Rachanagouda and his wife Gouramma, the plaintiff being the co-parcener, naturally succeeds to her 1/3rd share. The plaintiff has not shown description of the suit schedule properties sufficient to identify it according provisos of U/Order VII Rule 3 of C.P.C., in view of the same, the plaint liable to be returned as such the same is liable to rejected. Hence sought for dismissal of the suit.

V) The written statement of defendant No.4 is as follows:

The defendant No.4 in her written statement admitted the entire plaint averments and sought for decree the suit of the plaintiff, the plaintiff and defendant No.4 to declare as co-parceners who is entitle for 1/3rd share in the suit schedule properties.

VI) The written statement of the defendants No.5 and 6 is as under:

The defendants No.5 and 6 in their written statement denied the suit of the plaintiff. The defendant No.4 Virupamma and plaintiff Gangamma are in collusion and at the instance of defendant No.4, the plaintiff has come up with the top noted suit to harass these defendants No.5 and 6 herein. The family is also owning another 13 acres of land at Khanapur village which is not included as suit schedule property and on this count the is liable to be dismissed. The defendant No.1 Rachana Gouda also having 2 daughters namely Sridevi @ Devamma and Gangamma. The defendant No.1 had performed the marriages of his above said daughters by incurring huge expenses and contracting debts. The defendant No.1 contracted debts to the tune of Rs.10 to 12 lakhs from Pragathi Gramin Bank, Gabbur and he also contracted debts from private persons to perform marriages of his children and to discharge family debts. Now the terms between defendant

No.1 to 3 on one side and the plaintiff and defendant No.4 on other side having been strained and therefore the plaintiff has come up with the top noted false suit. Item No.11 in the plaint schedule land Sy.No.32 measuring 13 acres 12 guntas of Honnatagi village was standing in the R.T.C. records in the name of defendant No.2 and 3. The defendant No.1 to 3 have sold the above said land Sy.No.32 to an extent of 09 acres 22 guntas in the northern portion for valuable consideration in favour of defendant No.5 Varadaraj under registered sale deed document No.2959/2008-09 dated:21-11-2008. Similarly the defendant No.1 to 3 have sold another 6 acres extent in Souther portion for a valuable consideration in favour of defendant No.6 Malkendraraya under registered sale deed No.2956/2008-09 dated:21-11-2008. Both the sale deeds have been executed by defendant No.1 to 3 towards family and legal necessities and to discharge bank and private loans with consent of other family members. After deducting 15 acres 22 guntas sold out portion still the defendants having 3 acres 10

guntas in Western portion of said land Sy.No.32. The defendant No.5 and 6 have made reasonable, proper enquirers about the vendors family, legal necessities prior to purchase and after satisfying about the family necessities the defendants have purchased the said extents out of suit Sy.No.32 of Honnatagi of Devadurga which is known as Basavanagudi hola. The defendant No.5 and 6 are the bona-fide purchasers for valuable consideration. The plaintiff cannot question the said alienation including both the sale deeds in question. The joint family of defendant No.1 to 3 is owning about 120 acres of landed properties. The plaintiff has left out 18 acres land property situated at Khanapur village in the suit. The sold out portion in favour of these defendants would not exceed the share of defendant No.1 in the joint family property. By extending rule of equity this sold out portion in the plaint schedule-I property Sy.No.32 has to be allotted to the share of defendant No.1. Having regard to attending facts and circumstances it is fit case to apply rule of

equity and allot the suit land Sy.No.32 to the share of defendant No.1 Rachana Gowda. At the time of marriage the item No.10 bearing Sy.No.26 measuring 09 acres 15 guntas of Honnatagi village towards her share. The said item of suit property is standing in R.T.C. records in the name of defendant No.4, so the defendant No.4 having taken the share has instigated her elder sister the plaintiff to file this false suit. Similarly at the time of marriage of plaintiff. She was also given case of Rs.25,000/- and gold ornaments of 10 tolas and also taken her respective share and the plaintiff and defendant No.4 are no more members and co-parceners of the joint family. The defendant No.1 is having 2 sons i.e. defendant No.2 and 3 and 2 and 2 daughters who constitute the Hindu joint family. The defendant No.1 to 3 are the owners and in possession of suit properties excluding the sold out portions. The defendant No.1 also sold out of item No.12 in the plaint schedule-I property Sy.No.86 measuring 14 acres 20 guntas of Honnatagi out of which 05 acres 30 guntas in Southern

portion towards his family and legal necessities in favour of defendant No.7 Huligamma under registered sale deed document No.868/2001-02 dated:18-03-2002. The defendant No.1 also sold the item No.13 in plaint schedule-I property Sy.No.87 totally measuring 20 acres 20 guntas out of which 8 acres 30 guntas in Southern portion in favour of defendant No.8 Bheemappa under registered sale deed document No.869/2001-02 dated:18-03-2002. The defendant No.1 also sold item No.14 in plaint schedule-I Sy.No.88 measuring 21 acres 15 guntas out of which 9 acres 15 guntas in Southern portion in favour of defendant No.9 Sharanappa under registered sale deed document No.867/2001-02 dated:18-03-2002. All the said sale deeds are towards family and legal necessities. The plaintiff has no share in all the suit properties. The defendant No.1 is also owning and possessing 3 residential house properties at Honnatagi. The plaintiff has not included the house properties and one 18 acres land at Khanapur village and on this count the suit of the plaintiff is

not maintainable. The defendant No.1 to 3 towards their family and legal necessities have sold the suit Sy.No.32 in favour of defendant No.5 and 6 as absolute owners and in possessors. The plaintiff neither having any share in the suit properties or share in joint possession with defendant No.1, the plaintiff is not entitle for any partition including the declaration of sale deeds as illegal null and void and not binding on the plaintiff. Since the time of marriage the plaintiff, has excluded and ousted from the possession of the suit properties and on this count also the plaintiff has no right for partition, the plaintiff being in possession of the suit properties for the last more than 35 years. The suit for partition is barred by law of limitation. The contents of para No.3 of the plaint is that plaintiff is one of the joint family member and having her share are denied. The plaintiff not included the 3 residential house of Honnatagi village thus the suit of the plaintiff is not maintainable and denied that plaintiff and defendant No.4 are co-parceners, the contents of

para No.5 of the plaint is correct that after the death of Gouramma the suit schedule properties are transferred in the name of defendants No.1 to 3. Further denied that without giving any share to plaintiff and defendant No.4 transferred in the name of defendants No.1 to 3. It is denied that the plaintiff and defendant No.4 are the coparceners and they are having 1/3rd share are denied and the contents of para No.6 are partly admitted and partly denied, it is denied that after death of Gouramma who died leaving behind the plaintiff and defendant No.4 and defendant No.1 to 3 got mutated their names in concerned records depriving the right and interest of plaintiff. In-fact with the consent of plaintiff and defendant No.4 and defendant No.1 to 3 have got mutated the lands in their names. Thereafter they have sold some of the properties to defendant No.5 and 6 vide registered sale deed document No.2957 and 2956/2008-09 dated:21-11-2008 as correct, further contended that sale deed are made behind back of the plaintiff without intimation and consent. That the sale deed in

favour of defendant No.7 to 9 are correct and the sale deed are for family legal necessities. In fact defendant No.5 and 6 made enquiry of legal necessities of family and purchased the same for valuable consideration. The sale deed executed by defendant No.1 to 3 in favour of defendant No.5 and 6 are binding on the plaintiff and defendant No.4 are having knowledge of the sale deeds executed by defendant No.1 to 3 so that plaintiff cannot seek those sale deeds to be declared as null and void. It is false to suggest that Rangana Gowda and his wife Gouramma and plaintiff being the coparcener entitle for 1/3rd share are denied and constructive possession of plaintiff is denied. In fact the defendant No.1 to 3 have executed the sale deed in favour of defendant No.5 and 6 they have divided the possession, since from the date of purchase they are in physical possession and enjoyment and cultivation without any interference and plaintiff and defendant No.4 and denied the panchayath held in the February-2010 and refused to give share at Honnatagi village and denied the plaint para

No.9 as false, the plaintiff has not valued the suit properly. The court fees paid is not properly. The plaintiff is not entitle for relief of declaration of sale deed as null and void. The suit is barred by law of limitation, hence sought for dismissal of the suit.

VII) The written statement averments of defendant No.7 to 9 is as under:

In their written statement contended that, defendant No.1 to 4 are in collusion, the plaintiff and they are also sailing with plaintiff in the present suit, the suit is collusive one. The joint family of the plaintiff of plaintiff and defendant No.1 to 4 is owning the non suit house properties which are constructed with stone walls and mud roofed situated at Honnatagi village in this house defendant No.1 to 3 are residing, without including the house property, the suit is not maintainable for partial partition. The son of last ascendant namely Gangana Gouda the father of plaintiff and defendant

No.1 to 4 had contracted debts for discharging the debts of the joint family the defendant No.1 sold an extent of 05 acres 30 guntas out of suit Sy.No.86 towards souther portion in favour of defendant No.7 Huligamma under registered sale deed document No.868/2001-02. The defendant No.1 had sold an extent of 09 acres 15 guntas in land bearing Sy.No.88 measuring 21 acres 15 guntas towards southern side in favour of defendant No.9 Sharanappa under sale deed document No.867/2001-02, thus in all the defendant No.1 had sold the said lands totally measuring 23 acres 35 guntas to defendant No.7 to 9. The plaintiff and defendant No.1 to 4 shall have no right to question the legality of the sale deeds executed by defendant No.1. The defendant No.1 to 4 and plaintiff out of sale proceeds the sale deeds have liquidated and discharged debts including anticident debts and out of remaining sale consideration amount. The suit sale deeds are in the year of 2001-02. The plaintiff and defendant No.1 to 4 having the knowledge about the sale deeds in the year 2001 itself, when

the defendant No.1 had executed the sale deeds in favour of defendant No.7 to 9. Therefore the suit of the plaintiff is barred by Law of Limitation without including house property the suit of the plaintiff is not maintainable, originally the suit lands are standing in the name of Rachanagouda after his death schedule properties are transferred in the name of Gouramma in the way of succession are denied. Further denied that plaintiff and defendant No.4 are coparcener and that denied the sale deeds are not binding on the plaintiff and defendant No.1 to 4 and denied that Gouramma died leaving behind the plaintiff and defendant No.4 and defendant No.1 to 3 got mutated their names in the revenue records to deprived the rights, interest of the plaintiff are denied, in fact, with consent of the plaintiff and defendant No.1 to 3 got mutated the lands in their names, thereafter sold the property to the defendants No.7 to 9 under registered sale deed document No.867, 868, 869/2001-02 dated: 18-03-2002. They have sold some of properties in favour of defendant No.5 and 6. The

sale deeds regarding Sy.No.32 measuring 09 acres 22 guntas southern side out of 18 acres 32 guntas sold in favour of defendant No.5 and also in the same survey number an extent measuring 06 acres towards towards southern side sold in favour of defendant No.6 is not within knowledge of defendant, because those sale deeds are in the year 2008 which are subsequent to the sale deeds of defendant No.7 to 9 and that sale deeds have been executed by defendant No.2 in favour of defendant No.5 and 6 is not the class-I legal heir of late Gangana Gowda. Therefore the sale deeds executed by defendant No.1 in favour of defendant No.7 to 9 are not binding on the plaintiffs and defendant No.1 to 4. Thus the sale deeds also in the year 2001-02. Therefore having knowledge of the sale deeds to the plaintiff and defendant No.1 to 4 cannot seek for declaration as null and void and suit of the plaintiff is barred by law of limitation, it is false to suggest that, Ranganagouda and wife of Gouramma the plaintiff being the coparcener naturally succeeds to her 1/3rd share together

with defendant No.1 to 4 and plaintiff and defendant having common interest and they are enjoying the suit schedule properties as tenants in common and that the plaintiff is in joint and constructive possession over the suit schedule properties ever since from the death of Gouramma and Rachanagouda are denied. In fact when the defendant No.1 had executed sale deeds in the year 2001 in favour of defendant No.7 to 9 and delivered possession on 18-03-2002 since that date defendant No.7 to 9 are in physical possession and enjoyment without interference from anybody. The contents of para No.8 are false and same are denied the plaintiff is entitle to claim share and demanded for partition there was panchayath was held are all false. The suit is not properly valued, the plaintiff is not entitle for declaration of sale deeds for null and void and suit is barred by law of limitation, hence sought for dismissal of the suit.

VIII) Out of the pleadings of the parties my learned

predecessor in office has framed the following issues:

1. Whether the plaintiff proves that plaintiff and defendant nos.1 & 4 are the children of Gangannagowda as contended in the plaint ?
2. Whether the plaintiff proves that plaintiff, defendant no.1 and defendant no.4 constitute Hindu undivided joint family and further proves that plaintiff and defendant nos. 1 & 4 are the co-parceners as contended in the plaint ?
3. Whether the plaintiff proves that suit schedule properties are the joint family properties of the plaintiff and defendant nos.1 & 4 and liable for partition as contended in the plaint ?
4. Whether the plaintiff proves that sale deeds bearing No.2957/08-09, dated 21.11.2008 and sale deed bearing No.2956/08-09 dated 21.11.2008 and sale deed bearing No.868/01-02, dated 18.03.2002 and sale deed bearing No.869/01-02, dated 18.03.2002 and sale deed bearing No.867/01-02, dated 18.03.2002 (i.e., alienation made by defendant nos.1 & 2 in favour of defendant nos.7 to 9) are null and void and not binding on the plaintiff herein ?

5. Whether the plaintiff proves that plaintiff is entitled for 1/3rd share in the suit schedule properties ?
6. Whether the defendant nos.7 to 9 prove that suit is bad for partial partition ?
7. Whether the defendant nos.7 to 9 prove that suit is barred by limitation ?
8. Whether the defendant nos.7 to 9 prove that they are the bona-fide purchasers of the suit schedule properties for valuable consideration and without notice as contended in their written statement ?
9. Whether the plaintiff is entitle for the relief claimed ?
10. What order or decree ?

Additional issues:

1. Whether the defendant no.4 is also entitled for 1/3rd share in the suit scheduled properties as contended in her written statement ?

2. Whether the defendant Nos.5 & 6 prove that they are the bona-fide purchasers of the suit schedule properties for valuable consideration and without notice as contended in their written statement ?
 3. Whether the defendant No-1(a) proves that she has perfected her title over item No-12 to 14 of suit schedule properties by way of adverse possession ?
 4. Whether the defendant No-1(a) to (c) proves that the suit is barred by law of limitation ?
 5. Whether the defendant No-1(a) to (c) proves that suit is barred by law and liable for rejection ?
 6. Whether suit is properly valued and court fee paid is sufficient ?
- IX)** In support of the case of plaintiff, the plaintiff has examined herself as P.W-1 and also examined one more witness as P.W-2 and got marked documents Ex.P-1 to Ex.P-190.

On the other hand the defendants have not chosen to

lead evidence.

X) Heard arguments submitted by the counsel for the plaintiff and defendants not chosen to submit arguments.

XI) Perused the materials placed before the court.

XII) My answer to the above issues are as under:

Issue No.1	:	In the Affirmative.
Issue No.2	:	In the Affirmative.
Issue No.3	:	In the Affirmative.
Issue No.4	:	In the Affirmative.
Issue No.5	:	In the Affirmative.
Issue No.6	:	In the Negative.
Issue No.7	:	In the Negative.
Issue No.8	:	In the Negative.
Additional Issue No.1	:	In the Affirmative.
Additional Issue No.2	:	In the Negative.
Additional Issue No.3	:	In the Negative.
Additional Issue No.4	:	In the Negative.
Additional Issue No.5	:	In the Negative.
Additional Issue No.6	:	In the Affirmative.

Issue No.9 : In the Affirmative.
Issue No.10 : As per final order for the
following,

REASONS

XIII) Issue No.1 to 5: Since these issues are inter-linked, in order to avoid repeatation the same are taken together for consideration.

In support of the case of the plaintiff, plaintiff has examined herself as P.W-1 who filed affidavit in lieu of examination-in-chief by reiterating entire plaint averments and got marked Ex.P-1 to Ex.P-190 and also examined one more witness by name Sanganna S/o Hampanna as P.W-2.

So far as documentary evidence produced by the plaintiff are that, Ex.P-1 to Ex.P-13 are the R.T.C. pertaining to Sy.No.17 relating to item No.1 of suit schedule properties, Ex.P-14 to Ex.P-26 are the R.T.C. extracts pertaining to Sy.No.18 relating to item No.2 of suit schedule properties, Ex.P-27 to Ex.P-43 are the R.T.C. extracts pertaining to

Sy.No.19 relating to item No.3 of suit schedule properties,
Ex.P-44 to Ex.P-52 are the R.T.C. extracts pertaining to
Sy.No.21 relating to item No.4 of suit schedule properties,
Ex.P-53 to Ex.P-67 are the R.T.C. extracts pertaining to
Sy.No.21/1 relating to item No.5 of suit schedule properties,
Ex.P-68 to Ex.P-78 are the R.T.C. extracts pertaining to
Sy.No.21/2 relating to item No.6 of suit schedule properties,
Ex.P-79 to Ex.P-91 are the R.T.C. extracts pertaining to
Sy.No.22 relating to item No.7 of suit schedule properties,
Ex.P-92 to Ex.P-104 are the R.T.C. extracts pertaining to
Sy.No.23 relating to item No.8 of suit schedule properties,
Ex.P-105 to Ex.P-108 are the R.T.C. extracts pertaining to
Sy.No.25 relating to item No.9 of suit schedule properties,
Ex.P-109 to Ex.P-112 are the R.T.C. extracts pertaining to
Sy.No.26 relating to item No.10 of suit schedule properties,
Ex.P-113 to Ex.P-121 are the R.T.C. extracts pertaining to
Sy.No.25 relating to item No.9 of suit schedule properties,
Ex.P-122 to Ex.P-135 are the R.T.C. extracts pertaining to

Sy.No.32 relating to item No.11 of suit schedule properties, Ex.P-136 to Ex.P-151 are the R.T.C. extracts pertaining to Sy.No.86 relating to item No.12 of suit schedule properties, Ex.P-152 to Ex.P-167 are the R.T.C. extracts pertaining to Sy.No.87 relating to item No.13 of suit schedule properties, Ex.P-168 to Ex.P-183 are the R.T.C. extracts pertaining to Sy.No.88 relating to item No.14 of suit schedule properties, Ex.P-184 is the mutation registrar bearing M.R.No.28/2007-08 relating to suit schedule properties, Ex.P-185 is mutation registrar extract bearing M.R.No.11/2009-10 relating to suit schedule properties, Ex.P-186 to Ex.P-188 are the certified copies of the registered sale deed dated:18-03-2002, Ex.P-189 is the certified copy of the registered sale deed dated:21-11-2008, Ex-190 is the certified copy of the registered sale deed dated:21-11-2008.

XIV) On behalf of the plaintiff, one more witness by name Sanganna S/o Hampanna has examined himself as P.W-2 who

by filing affidavit in lieu examination-in-chief by stating that, he is the relative of plaintiff and defendant No.1 and stated that, the plaintiff and defendant No.4 are the sisters of defendant No.1 and suit schedule properties are the joint family properties and they are the joint family members the suit schedule properties are originally standing in the name of deceased Ganganagouda the father of defendant No.1 and plaintiff and defendant No.4 and recently came to know that the suit schedule properties are came to be mutation to deceased defendant No.1 and also in the name of defendant No.2 and 3 and some of the lands came to be sold to intending purchasers, as such due to difference of opinion and selling of lands defendant No.1 to 3. The plaintiff asked for share in the suit schedule properties, the schedule properties being the ancestral properties of plaintiff and defendant No.4 have got share in the suit schedule properties and they are the children of Ganganagouda. The suit properties are standing in the name of Gouramma who is grand-mother of plaintiff and

defendant No.1 and 4 and suit properties came from fore fathers originally the lands were standing in the name of Rachanagouda who died long back, after his death properties were transferred in the name of Gouramma by way of succession, the plaintiff and defendant No.1 and 4 are coparcener and no partition is effected between the plaintiff and defendants at any point of time, as such the plaintiff is having 1/3rd share in the suit schedule properties. After the death of Gouramma behind the back of plaintiff and defendant No.4, the defendant No.1 and 2 got mutated their names in the revenue records and land bearing Sy.No.32 measuring 178 acres 32 guntas out of which 09 acres 22 guntas towards souther side sold defendant No.2 under registered sale deed dated:21-11-2008. Again in the same Sy.No.32 the defendant No.2 sold to the extent of 6 acres towards southern side in favour of Malkendrayya S/o Amaregouda through registered sale deed dated:21-11-2008 and said sale deeds are behind the back of the plaintiff without her consent, again defendants

sold in the land bearing Sy.No.86 measuring 14 acres 20 guntas out of which 5 acres 30 guntas towards southern side in favour of Smt. Huligemma W/o Sabanna through registered sale deed document No.868/2001-02 dated:18-03-2002. The defendant again sold in the land bearing Sy.No.87 totally measuring 20 acres 33 guntas out of which 08 acres 30 guntas towards southern side in favour of Bhimappa S/o Hanumanthu through sale deed bearing document No.869/2001-02 dated:18-03-2002. The defendant No.1 also sold in suit schedule property land bearing Sy.No.88 which is totally measuring 21 acres 15 guntas out of which 09 acres 15 guntas towards souther side in favour of Sharanappa S/o Hanumantha through registered sale deed bearing document No.867/2001-02 dated:18-03-2002. All the said sale deeds are behind the back of the plaintiff and defendant No.4 and the sale deeds executed by defendant No.1 to 3 are bad in law and not binding on the plaintiff and the same be declared as null and void to the extent of her share. Thus sought for

partition and separate possession by claiming 1/3rd share in the suit schedule properties.

XV) On the other hand defense taken by the defendant No.1 in his written statement is that, the relationship is admitted between the parties. Item No.12 to 14 in schedule No.1 of the suit schedule properties pertaining to late Ganganagouda i.e. father of the plaintiff, defendant No.1 and 4, in the year 1973 voluntarily released his all rights and possession over the suit schedule properties of the defendant No.1 and defendant No.1 entered into the possession to the above said suit schedule properties and plaintiff has suppressed the same, the father of the plaintiff given huge ornaments to the plaintiff as share which was considered by the plaintiff during the period since then the possession and enjoyment of the defendant over the above properties are peacefully settled without paying any revenue to the Government and contended that on 14-01-1990 defendant No.1 called the plaintiff and defendant No.4 on the

auspicious festival Sankranthi plaintiff by taking advantage of love and affection over the plaintiff and defendant No.4 once again they demanded for share over the item No.12 to 14 and defendant No.1 is perfected his title by way of adverse possession. The plaintiff is not entitle for claiming any partition over the item No.1 to 14 schedule of the suit schedule properties. The plaintiff either in joint nor considering possession over the suit schedule properties and sought for dismissal of the suit.

XVI) The defendant No.4 by filing written statement admitted the case of the plaintiff and claimed 1/3rd share in the suit schedule properties.

XVII) The defendant No.5 and 6 who are purchasers, in their written statement contended that they are the bona-fide purchasers for valuable consideration. The defendant No.4 have taken share and she was allotted with item No.10 in

Sy.No.26 measuring 09 acres 15 guntas and R.T.C. standing in her name and defendant No.4 has instigated the plaintiff to file thus false suit. Similarly at the time of marriage of plaintiff they also given Rs.25,000/- cash and gold ornaments of 10 tolas. Hence the suit of the plaintiff is not maintainable and in-respect of 3 residential house properties of Honnatagi village is not included in the suit, hence suit of the plaintiff is not maintainable and the suit for partial partition is not maintainable. The suit is barred by law of limitation.

XVIII) The defendant No.7 to 9 in their written statement contended that, house properties are not included and suit is bad for partial partition as suit is not maintainable and the suit is barred by law of limitation. During the course of cross-examination of P.W-1 and 2 nothing is elicited to disbelieve the case of the plaintiff and also nothing is elicited in support of the case of the defendant No.5 to 9, thus the oral and documentary evidence placed by the plaintiff establishes that,

she herself and defendant No.1 to 4 are the children of Ganganagouda as contended in the plaint are constitute Hindu un-divided joint family and they are the coparceners and the schedule properties are joint family properties of plaintiff and defendant No.1 to 4 and liable for partition. And the plaintiff proves that, the sale deeds mentioned in the schedule-II are not binding on the plaintiff and plaintiff being the class-I heir as per Sec.8 of Hindu Succession Act and as per the amended to the Hindu Succession Act the plaintiff being the class-I equally entitle for 1/3rd share in the suit schedule properties as prayed in the suit. Accordingly I, answered issues No.1 to 5 in the Affirmative.

XIX) Issues No.6 to 8: Since these issues are inter-linked, in order to avoid repeatation the same are taken together for consideration.

The defendants No.7 to 9 taken up the defense that the suit is bad for partial partition and suit is barred by law of

limitation and they are the bona-fide purchasers of the suit schedule properties for valuable consideration and without notice as contended in their written statement. In this case none of the defendants have lead evidence and defendants No.7 to 9 not chosen to lead evidence and during the course of cross-examination of P.W-1 nothing is elicited to disbelieve the case of the plaintiff and also failed to prove that, the suit is bad for partial partition and in this case defendant No.7 to 9 contended that the suit is barred by law of limitation and they are the bona-fide purchasers for valuable consideration, but in order to prove their defense nothing is elicited from the mouth of P.W-1 and 2. The plaintiff in her plaint contended that cause of action for the suit arose in the month of February-2010 when she finally asked the defendant No.1 for share and defendant No.1 flatly rejected and denied for partition. During the course of cross-examination of P.W-1 nothing is elicited to show that she was aware of alleged alienation, the defendant No.7 to 9 failed to elicit that, the

suit for bad for partial partition and suit is barred by law of limitation and failed to prove that they are bona-fide purchasers for valuable consideration, hence issues No.6 to 8 are answered in the Negative.

XX) Additional issue No.1: In this case defendant No.4 claiming 1/3rd share in the suit schedule properties, she being the class-I heir along with the defendant No.1 she is entitle for 1/3rd share in the suit schedule properties as contended in her written statement. The defendants No.5 and 6 in their written statement contended that, item No.10 of the suit schedule property was allotted to defendant No.4 but, no materials are placed before the court to establish the same and defendant No.5 and 6 have not led their evidence, thus defense taken by the defendant No.5 and 6 not proved, as the defendant No.4 being the class-I heir, she is entitle for partition to the extent of 1/3rd share as contended in her written statement. Accordingly I, answered additional issue

No.1 in the Affirmative.

XXI) Additional issue No.2: The defendant No.5 and 6 in their written statement contended that they are the bona-fide purchasers of suit schedule properties for valuable consideration and without notice. During the course of cross-examination of P.W-1 and P.W-2 nothing is elicited in support of their contention and also they are failed to lead their evidence except taking of contention, the defendant No.5 and 6 failed to prove they are the bona-fide purchasers for valuable consideration and without notice. Thus I, answered additional issue No.2 in the Negative.

XXII) Additional issue No.3 to 6: Since these issues are inter-linked, in order to avoid repetition the same are taken together for consideration.

The defendant No.1(a) contended that she is perfected her title over the item No.121 to 14 by way of adverse

possession, the defendant No.1(a) to (c) contended that, suit is barred by law of limitation as such suit is liable to be rejected. During the course of cross-examination of P.W-1 and P.W-2 nothing is elicited in support of defense taken by the defendant No.1(a) to (c) and they are also not chosen to led their evidence, thus the defendant No.1(a) to (c) failed to prove that they are perfected their title over the item No.12 to 14 of suit schedule properties by way of adverse possession and failed to prove the suit is barred by law of limitation and suit is liable to be rejected. And in this case the plaintiff has valued the suit as per Section 35(2) of Karnataka Court Fees and Suit Valuation Act and paid and fixed court fees of Rs.200/-, thus it cannot be held that the suit is not properly valued and the court fees paid is insufficient, thus I, answered additional issues No.3 to 5 in the Negative and additional issue No.6 in the Affirmative.

XXIII) Issue No.9: In view of my answered to the issue No.1

to 5 in the Affirmative, issue No.6 to 8 in the Negative and additional issue No.2 to 5 in the Negative. The plaintiff has proved herself and defendant No.1 and 4 are entitle for 1/3rd share each in the joint Hindu un-divided family and suit schedule properties are ancestral properties and liable to be partitioned. The sale deeds mentioned in the schedule No.II are made by defendant No.1 and 2 in favour of defendant No.7 to 9 and not binding on the plaintiffs, as such the plaintiff is entitle for 1/3rd share as claimed in the suit schedule properties. Accordingly I, hold that the plaintiff is entitle for the relief as claimed in the suit, accordingly I, answered issue No.9 in the Affirmative.

XXIV) Issue No.10: In the result, I proceed to pass the following:

ORDER

The suit of the plaintiff is hereby
decreed with cost.

The plaintiff is entitle for 1/3rd share in the suit schedule properties.

The defendant No.1 (a) to (e) and defendant No.4 are entitle for 1/3rd share in the suit schedule properties.

The registered sale deeds mentioned in the schedule-II i.e. registered sale deed bearing document No.867, 868 and 869/2001-02 dated:18-03-2002 and registered sale deed bearing document No.2956, 2957/2008-09 dated:21-11-2008 are hereby declared as null and void and not binding to the extent of plaintiff share.

Draw preliminary decree accordingly.

(Dictated to the stenographer, transcribed and computerized by him, corrected by me and then pronounced by me in the open court on this the 29th day of November, 2022)

(Nagesh Murthy B.K.)
Senior Civil Judge and JMFC,
Devadurga, Raichur.

ANNEXURES

1. List of witnesses examined on behalf of plaintiff.

P.W-1: Smt. Gangamma W/o Mallikarjuna.

P.W-2: Sanganna S/o Hampanna.

2. List of documents marked on behalf of plaintiff.

Ex.P-1 to Ex.P-183 : R.T.C. extracts.

Ex.P-184 and Ex.P-185 : M.R. extracts.

Ex.P-186 to Ex.P-190 : Certified copies of registered sale deeds.

3. List of witness examined on behalf of defendants.

-Nil-

4. List of documents marked on behalf of defendants.

-Nil-

(Nagesh Murthy B.K.)
Senior Civil Judge and JMFC,
Devadurga, Raichur.