



Presented on : 16-09-2025
Registered on : 16-09-2025
Decided on : 23-04-2026
Duration : 0 years, 7 months, 7 days

**IN THE COURT OF THE SENIOR CIVIL JUDGE AND JMFC., AT
LINGASUGUR.**

Present: Smt.Undi Manjula Shivappa
B.Sc.LLM.,
Senior Civil Judge & JMFC.,
R.A.No.37/2025

Dated this the 23rd day of April 2026

Appellant:

Smt. Sajida Begum W/o Abid Hussain,
Age: 40 years, Occ: Household,
R/o. Ward no.8, Maski, Tq: Maski, Dist:Raichur.

(By Sri. Sharanappa Sajjan Advocate)

Versus

Respondents:

1. Smt. Rajma W/o Late Moulasab,
Age: 46 years, Occ: Household,
2. Tippu Sultan S/o Late Rajasab,
Age: 49 years, Occ: Agriculture,
3. Mohammed Rafi S/o Late Rajasab,
Age:46 years, Occ: Agriculture,
All resident of Ward no.8, Maski,
Tq: Maski, Dist:Raichur.

(Resp. No.1 to 3 by Sri. I.V., Advocate)

**J U D G M E N T**

This regular appeal is preferred by the appellant under Order 41 Rule 1 of C.P.C., challenging the judgment and decree passed in O.S.No.132/2024 dated: 01-08-2025 by the Civil Judge & JMFC Court, Maski, Tq: Maski, District. Raichur.

2. The appellant is plaintiff and the respondents no.1 to 3 are defendant no.1 to 3 in the trial court in the suit filed for relief of partition and separate possession against the defendants.

And for the sake of brevity and convenience, the parties are hereinafter referred to by their rankings before the trial court.

3. The brief facts of the plaintiffs case is that:

The case of the plaintiff that, plaintiff has filed this suit for the relief of Partition and separate possession of her 1/4th legitimate shares in the suit properties bearing Sy.No.231/*/* measuring 3 acres 15 guntas, Sy.No.231/*/* measuring 0.31 guntas, Sy.No.231/*/* measuring 00.31 guntas and Sy.No.231/*/4 measuring 00.31 guntas situated at Maski. The last ascendant of family of plaintiff one Rajasab S/o. Husain Sab died leaving behind his 3 sons namely Moulasab, Tippusultan, Mohammed Rafi and

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one daughter by name Sajida Begum and his wife Smt. Munnabee as his legal heirs. First son Mousab died leaving behind his wife/defendant no.1, sons and daughters as his legal heirs. Rajasab was the owner in possession over the suit lands, he died intestate. After his death, revenue authorities sanctioned mutation in respect of suit properties in the name of his wife Munnabee W/o. Rajasab. The Munnabee died on 01.12.2021 leaving behind plaintiff and defendants as her legal heirs. Then revenue authorities changed the name of plaintiff and defendants. They are in joint possession and ownership over the same. Therefore, plaintiff and defendants are entitled for 1/4th share each in suit properties. Suit properties are under joint cultivation and enjoyment without obstruction of anybody. In the first week of July-2024, plaintiff approached the defendants to allot her share over the suit properties but they refused the same.

4. After service of suit summons by trial court, the defendant No.1 appeared before the court through her counsel but not filed any written statement. Defendant no.2 and 3 did not appear before the court, hence, they were placed ex-parte.

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5. In order to prove the case, the plaintiff got examined as Pw-1 and produced 3 documents as per Ex.P-1 to 3 and closed their side evidence.
6. Thereafter the trial court has filed the following points:
1. Whether the plaintiff proves that, suit schedule properties are available for partition?
 2. Whether the plaintiff is entitled for relief as sought for?
 3. What order or decree ?
7. After hearing the parties, the trial court answered the points no.1 and 2 in the negative and finally the trial court dismissed the suit of plaintiff.
8. Being aggrieved by the said judgment and decree, the appellant/plaintiff preferred the present appeal on the following:

G R O U N D S

That the Hon'ble trial court has committed serious error of law and facts, as important factor was not taken into consideration and thereby the Hon'ble court below was come to wrong conclusion in the matter which were totally unwarranted, besides perverse, capricious and liable to be set aside. The plaintiff in her Complaint as well as in her examination chief as clearly stated that one Rajasab S/o Husensab was died by leaving by him his 3 sons

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namely Moulasab, Tippu Sultan, Mohammed Rafi was defendant No.2 and 3 and one daughter by name Sajida Begum who is plaintiff herein. The first son Moulasab was died leaving behind him his wife defendant No.1 as his legal heirs. Further stated that, the Rajasab was the owner and in possession of the suit properties and died intestate. Soon after death of Rajasab the revenue authorities sanctioned mutation in the names of plaintiff and defendants No.2 and 3 mother by name Munnabee W/o Rajasab the said Munnabee was died on 01-12-2021 leaving behind her the plaintiff and defendants as legal heirs. Accordingly the revenue authorities sanction mutation in the names of plaintiff and defendant as joint owners and lawful possession of the suit properties. "That the Hon'ble court in page No.9 para No.12 of the Hon'ble Trial court comes to the wrong conclusion that the son's and daughters of late Moulasab being the legal heirs are entitle for legal share in the suit property but they were not added parties to the suit, as such the suit of plaintiff is not maintainable in the eyes of law without impleading them as parties to the proceedings. In fact the defendant No1 is the wife of late Moulasab and she has appeared through her counsel but she neither filed the written statement nor lead her evidence by stating that the suit plaintiff is not maintainable without impleading her son and daughter in the proceedings. It is undisputed fact that the plaintiff and defendants are belong to Muslim and governed by the Mohammedan law. It is further undisputed fact that under Mohammedan right of inheritance arises only on the death of person who is owning

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property. In this case the suit properties are previously standing in the name of Rajasab and soon after his death the name of his wife Munnabee W/o Rajasab were came on record. The said Munnabee was died on 01-12-2021 by leaving behind her the plaintiff and defendants as her legal hairs.

2. It is undisputed fact that, soon after death of Munnabee W/o Rajasab the defendant No.1 to 3 have made an effort to get sanction in name only in the revenue records but the plaintiff filed an objection to the application accordingly RRT No.266/2022 were held before the Tahasildar Maski. After hearing on both side and by considering that the plaintiff and defendants are the legal hairs of late Rajasab the Tahasildar Maski has order to sanction the mutation in the joint name of plaintiff and defendants. Later on defendant No.1 had filed the RRT appeal No 150/2023 before the Assistant Commissioner Lingasugur by challenging the order of Tahasildar Maski in RRT No.266/2022 but said appeal was dismissed on 19-09-2023 by confirming order of order of Tahasildar Maski. Accordingly the names of plaintiff and defendants were came in RTC column No 9 and 12 as joint owners and in possession of property. It is undisputed fact that, the husband of defendant No1 by name Moulasab was died prior to the death of the her mother Munnabee W/o Rajasab. Hence as on the date of sanction of mutation in the joint names of plaintiff and defendants the Moulasab was no more. standing in the principle under Accordingly at no point of time the property was name of Moulasab S/o Rajasab, it is well settle Mohammedan the

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right of inheritance arises only on the death of person who is owning property in his name. It is undisputed fact that, as on the date of filing of the suit no properties are standing in the name of Moulasab, as he died prior Sto Munnabee W/o Rajasab. As on the date of filing of the suit properties are standing in the joint names of plaintiffs and defendants. Therefore the question of bringing the sons and daughters of late Moulasab does not arise at all because the said sons and daughters are neither necessary nor proper properties to the proceedings like principles of Hindu law. The law of inheritance are not applicable to the sons and daughters of late Moulasab because as on the date of filing of the suit properties are not at all standing in the name of Moulasab. Therefore the impugned judgement is perverse, illegal and against the law, hence same is liable to set aside. Further, in order to prove her fact of the case, the plaintiff examined herself as PW-1 and got marked Ex.P1 to P3. In Exhibit P1 RTC it has been clearly mentioned that the mutation as been sanctioned as per Ex. P2 MR No;38/2023-24 on the basis of order of the Tahasildar in RRT No.226/2022. As on the date of filing of the suit the suit properties are standing in the joint names of plaintiffs and defendant therefore the plaintiff has proved that the plaintiff and defendants being the legal heirs of Late Rajasab are entitle for share in the suit properties as per Mohammedan law.

3. It is well settled principle of the law, that the daughter is getting half share of the son. Therefore the defendant No.1 to 3 together entitle for double share then the plaintiff share. Therefore

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mere non bringing of sons and daughters of Moulasab suit cannot be dismissed as not maintainable like concept of the Hindu law. Hence the impugned judgement is perverse, illegal and against the law, hence same is liable to set aside. That, by plain reading of the judgement it is manifest clear that, the court below not properly appreciated the facts in issue and evidence on record, hence the impugned Judgement and decree passed by the Hon'ble trial court is totally erroneous and against the law as such same is deserves to be interfered with by decreeing the suit of plaintiffs in accordance with law.

9. After issuance of notice to respondents, the respondents appeared through their counsel but not filed objections. Thereafter, the trial court records were secured. After receipt of the records, heard the arguments of learned counsels for both the parties.

10. The following points arise for my consideration:

1. Whether the judgment and decree passed by the trial court is perverse, illegal, capricious, erroneous, arbitrary, unjust and opposed to the law and interference of this appellate court is necessary ?
2. Whether the trial court has failed to appreciate the oral and documentary evidence in a proper perspective manner ?
3. What order ?

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11. My answers to the above points are as under:

- Point No.1 : In the affirmative.
Point No.2 : In the affirmative.
Point No.3 : As per final order,
for the following :

R E A S O N S

12. POINT No.1 and 2 :- Both these points are taken up together for common discussion to avoid repetition of facts and evidence, as they are based on same set of facts and law.

13. I have heard the arguments of both side counsels and perused the trial court records. The plaintiff before trial court in order to prove his case examined himself as pw1. He filed chief affidavit where he submitted that plaintiff has filed this suit for the relief of Partition and separate possession of her 1/4th legitimate shares in the suit properties. The last ascendant of family of plaintiff one Rajasab S/o. Husain Sab died leaving behind his 3 sons namely Moulasab, Tippusultan, Mohammed Rafi and one daughter by name Sajida Begum and his wife Smt. Munnabee as his legal heirs. First son Moulasab died leaving behind his wife/defendant no.1, sons and daughters as his legal heirs. Rajasab was the owner in possession over the suit lands, he died intestate. After his

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death, revenue authorities sanctioned mutation in respect of suit properties in the name of his wife Munnabee W/o. Rajasab. The Munnabee died on 01.12.2021 leaving behind plaintiff and defendants as her legal heirs. Then revenue authorities changed the name of plaintiff and defendants. They are in joint possession and ownership over the same. Therefore, plaintiff and defendants are entitled for 1/4th share each in suit properties. Suit properties are under joint cultivation and enjoyment without obstruction of anybody. In the first week of July-2024, plaintiff approached the defendants to allot her share over the suit properties but they refused the same.

14. However he got marked documents such as marked Ex.P1 to P3. In Ex.P1 RTC it has been clearly mentioned that the mutation as been sanctioned as per Ex. P2 MR No;38/2023-24 on the basis of order of the Tahasildar in RRT No.226/2022. As on the date of filing of the suit the suit properties are standing in the joint names of plaintiffs and defendant therefore the plaintiff has proved that the plaintiff and defendants being the legal heirs of Late Rajasab are entitle for share in the suit properties as per Mohammedan law.

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15. It is admitted fact that the defendants have not filed any written statement before the trial court now defendants submits they want to put forth their defense. They have not been given an opportunity to cross examine the Pw-1. It is principle of natural principle that both parties must here before deciding any case. “AUDI ALTREM PARTEM”.

16. It is pertinent to note here that in the EX.P3 is the Order of Assistant Commissioner, the Assistant Commissioner court also observed that the plaintiff has not gave proper information about remaining legal heirs of Munnabee w/o Rajasab and in the present suit also plaintiff not produced any G-TREE to know the all legal heirs of deceased Munnabee W/o Rajasab. In the partition suit G-tree is must to know whether all necessary parties i.e., sharers included in the suit or not? Hence it is just and necessary to give an opportunity to defendants to lead their defense for proper adjudication of matter. Hence it become warrant to interfere in the judgment and decree passed by the trail court. Hence I answer point no.1 and 2 in the Affirmative.



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17. POINT No.3: In view of the reasons and findings on the Points No.1 and 2, I proceed to pass the following :

O R D E R

The regular appeal filed by the appellant is hereby allowed with cost.

Consequently the judgement and decree passed by the trial court in O.S.No.132/2024 dated:01-08-2025 on the file of Civil Judge and JMFC., Maski is hereby set aside.

Further, the matter is remand back to the trial court for fresh disposal with an opportunity to the both the parties to lead their evidence before the trial court.

Office to draw decree accordingly.

Transmit the trial court records along with the copy of this judgment and decree to the trial court, forthwith.

(Dictated to Stenographer Grade-III transcribed, print-out by him. Corrected, signed and then pronounced by me in the open court on this the **23rd day of April 2026**)

(UNDI MANJULA SHIVAPPA)
Senior Civil Judge & JMFC.,
Lingasugur.