

**TITLE SHEET IN ORIGINAL SUITS.**

C.R.P.No.67  
Form No.  
9(Civil)  
Title sheet for  
judgement in  
suits (R.P.91)

**IN THE COURT OF THE SENIOR CIVIL JUDGE AND J.M.F.C.  
AT MAGADI.**

**PRESENT**

**Sri. K. Mahadeva. B.A, LL.B.,**  
Senior Civil Judge and J.M.F.C.,  
Magadi

**DATED THIS 28th DAY OF JUNE, 2014.**

**:: O.S.NO.10/2014 ::**  
**OLD No.42/2003**

**Plaintiffs:-**

1. Smt. Krishnabai.S. W/o Late Shamarao, 56 years,
2. Smt. Shobha bai.S. W/o Mohanrao Kokane, 30 years  
R/o Behind Bharath Printing press,  
Channamma Compound Ramamurthinagar, Bangalore-16.
3. Smt. Mamatha bai S. W/o Nagabhushanrao, 28 years,  
R/o Krishnappa building (Corporator),m Yerriahnapalya,  
Devi Provision Store, Ramamurthynagar, Bangalore-16.
4. Smt. Nagubai.S. W/o Shankarrao, 24 years,  
R/o Baba Mechanical Industries-C-37,  
Hebbal Industrial Estate. Muthagal post, Mysore-16.
5. Smt. Kanyakumari.S W/o Puttaswamy, 22 years,  
R/o C/o Thimmaiah, no.4, CITB.8th cross, Bapujinagar, Bangalore.
6. Kum. Yashodhabai D/o late Shamarao, 19 years.
7. Kum. Gayathribai D/o late Shamarao, 19 years,
8. Kum. Parvathibai D/o late Shamarao, 22 years,  
All are R/o Ganigara street. Magadi Town, Bangalore Rural District.

9. Smt. Gayathribai W/o late Narayanarao, 52 years,
10. Kum. Pratha N.Jadhav S/o late Narayanarao, 22 years.  
Both are R/o No.23, Girls SChool street,  
Sheshadripuram, Bangalore.

(By **Shri. A.S.S.** Advocate)

**-V/S-**

**Defendants:-**

1. Sri. Ranganatharao S/o late Ramarao,  
Since deceased by his L.Rs.
  
- 1(a) Smt. Shanthabai W/o Late Ranganatharao, 68 years.
- 1(b) Smt. Rukminibai W/o Ravikumar, 41 years,  
Both are R/o No.347, Opp: Geetha Oil Mill, Viveknagar,  
Geetha road, Robertsonpet Extension, KGF, Kolar District.
  
- 1(c) Sri. Mohanrao S/o late Ranganatharao, 39 years,
- 1(d) Sri. Baburao S/o late Ranganatharao, 34 years.
- 1(e) Smt. Joythibai W/o Chintukale, 33 years.  
R/o No.52, Narayanappa Block, 6th cross,  
Benson Town,Bangalore-45.
  
2. Sri. Anantharao S/o late Ramarao, 58 years,  
R/o B.K.road Kalya gate, Magadi Town, Ramanagaram District.
  
3. Sri. Shivajirao S/o late Ramarao, 58 years,  
R/o No.69, Maruthinagara, Munireddi Garden road,  
Madiwala, Bangalore-68.
  
4. Sri. N.Shankararao S/o Narayanarao, 48 years.
5. Sri. B.N. Jagannatharao S/o Narayanarao, 46 years,  
Since deceased by his L.Rs.
- 5(a) Smt. Shayamalabai W/o late Jagannathrao, 40 years,
- 5(b) Sri. Dilip J.S/o Jagannathrao, 21 years
- 5(c) Kum. Darshan J.S/o late Jagannathrao. 18 years,
- 5(d) Kum. Divysri.J.D/o Jagannathrao, 15 years,  
All are R/o Behind Maruthi Mohan Theatre,  
Kalya Gate, B.K.road, Magadi town, Ramanagaram District.
  
6. Sri. B.N. Vishwanatharao S/o Narayanrao, 44 years,
7. Sri. B.N. Ranganatharao S/o Narayanrao, 42 years,

8. Sri. Baburao S/o Ranganatharao, 46 years,
9. Smt. Chandrabai W/o late Ramesh Rao, 36 years,
10. Kum. Resmabai D/o late Ramesh Rao, 19 years,
11. Kum. Sushma D/o late Ramesh Rao, 24 years,
12. Kum. Raghu S/o late Ramesh Rao, 22 years,
13. Sri. Shivajirao S/o Ranganath Rao, 42 years,
14. Sri. Ashokrao S/o Ranganath Rao, 40 years,
15. Sri. Arunrao S/o Ranganath Rao, 38 years,  
All are R/o No.65/2, 83/2, Anusha Ashram,  
Magadi main road, Industrial Town, Bangalore-44.
  
16. Smt. Parvathibai W/o Vasudevarao, R/o C/o Narayanappa,  
No.81, near Megha Computer, A.M.Palya, Sira gate, Tumkur.
  
17. Smt. Girijabai W/o M.Srinivasarao,  
Since deceased by her L.Rs:  
17(a) Smt. Kalajyothi D/o late Girijabai.  
17(b) Smt.S. Naveen D/o late Girijabai,  
17(c) Smt. M. Srinivasarao S/o Mannoji Rao, 75 years.  
All are R/o TF-3, Ajantha place, 1st main, 3rd cross,  
Channammanakere achhukattu, Banashankari 3rd stage,  
Bangalore-85.
  
18. Smt. Parvathibai W/o K.H. Vasudevarao, Major,  
R/o C/o Narayanappa, No.81, near Megha Computer,  
A.M.Palya, Sira gate, Tumkur.
  
19. Smt. Girijabai W/o M.Srinivasarao, 58 years,  
R/o No.5(113), 10th cross, D.Jaweregowda road,  
Hanumantha Nagar, Bangalore-19.
  
20. Smt. Yashodabai W/o Ranganatha, 25 years,  
R/o Kalya gate Badavane, Magadi town.
  
21. Smt. Shanthabai W/o Shivajirao, 55 years,  
R/o No. 69, 20th main, Venkateshwara Layout,  
BTM 1st stage, Bangalore-560068.
  
22. Sri. M.C.Chandru S/o Channarayappa, 45 years,  
R/o Matadapalya, Magadi Taluk, Ramanagar District.
  
23. Smt. Annapurna W/o Hanumantharaju, Major,  
R/o Manteshwara layout, Site No. 5555 & 5556,  
Near Kalya gate, Magadi town, Ramanagar District.

(Deft.No.1 By **Sri.TML.** Advocate)  
(Deft.No.2 By **Sri.A.S.** Advocate)  
(Defts.No.6 & 7 By **Sri.J.K.R.** Advocate)  
(Defts.No. 9 &18 By **Sri.L.N.C.** Advocate)  
(Defts.No.15 to 17 By **Sri.V.S.G.** Advocate)

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Date of institution of the suit: 24.02.2003.  
Nature of the suit: Partition and separate possession.  
Date of recording of evidence: 07.06.2007.  
Date on which judgement was pronounced: 28.06.2014.  
Total duration.  
Year/s. Month/s. Day/s.  
11. 04. 04.

( **K. MAHADEVA** ),  
SENIOR CIVIL JUDGE.  
MAGADI.

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

The plaintiffs have filed this suit against the defendants for the relief of partition and separate possession of 1/5th share in the suit schedule proeptries.

2. The brief averments of the plaint are as under:-

The plaintiffs contend that the husband of the 1st plaintiff and the father

of the plaintiffs No. 1 to 8 namely late Shamarao and the defendants No.1 to 3 and the husband of the 4th defendant namely Narayanarao are the brothers. Shamarao died about 50 years back. During the life time of Shamarao there was no partition of the suit properties between Ramarao and his sons. Narayanarao has also died. The 1st defendant is the elder person and he is managing the joint family properties. Till to-day no partition was taken place between the plaintiffs and the defendants. The plaintiffs further contended that during the life time of shamarao and Narayanarao they have demanded for partition with the defendants, the defendants have not effected the partition. The 1st defendant has post poned the partition by saying one or the other reasons. After the death of Shamarao and Narayanarao the plaintiffs have also demanded for the partition of suit properties with the 1st defendant. The 1st defendant has not effected the partition. A panchayat was taken place. Even in the panchayat also the 1st defendant has not conceded to effect the partition. The defendants are managing the suit properties. They are not distributing the income derived from the suit properties. The katha of the major items of the suit properties are standing in the name of 1st defendant. Some of the properties are standing in the name of mother of 1st defendant namely Sharadamma. The said Sharadamma also died. One of the suit property is standing in the name of Jyothirao who is the uncle of 1st plaintiff's husband. One of the suit property is in the name of the 2nd defendant. It is in joint katha. The defendants are enjoying all the suit properties. The defendants have no right to enjoy the suit properties and to receive the income of the suit properties without effecting the partition. The plaintiffs are entitle for 1/5th share in the suit properties. Therefore they have filed this suit and pray for decree of the suit.

3. During the pendency of the suit the defendant No.1 died. His L.Rs have

been brought on record. The defendant No.5 also died. His L.Rs have been brought on record. The defendant No.17 died. Her L.Rs. have also been brought on record. The plaintiffs and the defendants No. 18 to 21 have settled the matter. Therefore the defendants No. 18 to 21 have been deleted as per the orders dtd 16.07.2012. They have also deleted suit item No.17 and 18 properties. The suit has been continued against the other defendants. The defendants No. 22 and 23 have been impleaded afterwards.

4. The suit summons have been served on the defendants. They have appeared through their respective advocates. The defendant No.1, 2, 3, 4, 5, 10 to 17, 18 & 19, 21 and 23 have filed their respective written statements separately.

5. The written statement averments of the defendant No.1 is as under:-

The defendant No.1 contend that the averments made in para No.2 to 5 of plaint are all false and not correct and the said averments have been concocted for the purpose of filing of the suit. He further contended that the suit of the plaintiffs is not maintainable in law and on facts. The suit is frivolous and vexatious. The plaintiffs have suppressed the true facts and come to the court with false story. The 2nd defendant has instigated the plaintiffs to file this suit. The 2nd defendant is managing the joint family properties. He further contend that the suit of the plaintiffs is bad for non-joinder of necessary parties. The plaintiffs have avoided to implead the L.Rs. of Mukthabai and two daughters of Ramarao namely Parvathibai and Girijabai. The plaintiffs have intentionally included the item No. 3 and 6 properties. The said properties are his self acquired properties. Except item No. 3 and 6 all other suit properties are the ancestral and joint family properties. In the said properties the plaintiffs are entitled for 1/5th share in suit item No.1, 2, 4, 5,7 to 17 properties. About one year back after the death

of Ramarao there was misunderstanding arose between Ramarao and the 1st defendant with regard to the marriage of 1st defendant. The 1st defendant has not considered to marry the girl proposed by Ramarao. Therefore the 1st defendant left the house and started to live separately. Afterwords Ramarao died. After the death of Ramarao the 1st defendant got married and he started to live separately with his wife. The 1st defendant tried to come back to the family house of late Ramarao. But at that time the 2nd defendant was not allowed to join the joint family house. Therefore he continued to live separately and started to cultivate the government land and he started to cultivate other private lands on lease basis. Considering the cultivation and enjoyment of the 1st defendant the government has granted 3 acres 20 gts of lands in Sy No. 22 and Darakhastu has been sanctioned in his name. After the Land Reforms Act came in to force, he filed an application for grant of Occupancy rights in respect of suit item No. 6 property. Hence, Land Tribunal has granted one acre of land in Sy No. 256/3. Therefore the item No.3 and 6 properties are his self acquired properties. On 12.05.1979 all the sons of Ramarao have come to an understanding and leading their respective life separately. They got divided the properties bearing Sy No. 227 of Magadi village. In the said Sy number the 1st defendant has constructed a small house within the area of 17 x 23 ft. The other persons are enjoying their portions separately. The 2nd defendant has got chagned the katha of Sy No. 227 to the extent of his share. The 2nd defendant has got converted the suit item No.9 property into non-agricultural land and tried to sell the site formed therein without the consent of other co-owners. This defendant has questioned the 2nd defendant in that regard. Becasue of the said questioning the 2nd defendant has developed vengence against the 1st defendant. The 2nd defendant has instigated the plaintiffs to file this suit by including the self acquired properties of the 1st defendant. The 2nd defendant has also acquired some properties out of the joint family earnings. The said

properties are also to be included and they are also laible for partition. He has also demanding for parition and separate possession of his share in the remaining suit properties except item No. 3 and 6. As the plaintiffs have filed this suit at the instigation of the 2nd defendant he prays to dismiss the suit.

6. The averments of the written statement of the 2nd defendant are as under:-

The 2nd defendant has admitted the relationship. He has also admaitted the death of Ramarao. He has also admaitted that there was no partition during the life time of Ramarao. He has also admitted that the 1st defendant is the elder person in the family. He has also admitted that the 1st defendant is managing the joint family properties. Till to-day no partition has taken place. He has supported the plaint averments and he prays to decree the suit.

7. The averments of the written statement of the 3rd defendant are as under:-

The defendant No.3 contend that one Ramarao was the resident of Magadi. Sharadabai was his wife. The said Ramarao died about 50 years back. Sharadabai died about 20 years back. They had 10 children. 5 sons and 5 daughters. The 5 sons are Ranganathrao, Shamrao, Anatha rao, Shviaji rao and Narayanarao. Among the sons, Shamaraorao and Narayanarao died by leaving their wife and children. The plaintiffs are the wife and children of Shamarao. The defendants No.4 and 5 are the wife and son of late Narayanarao. The 5 daughters are Smt. Muthubai, Neelabai, Yashodabai, Parvathibai and Girijabai. The said daughters have been married long back. Among the daughters the 2nd and 3rd daughters are no more. Their children are alive. The plaintiffs have not impleaded the children of the

said daughters. Therefore the suit of the plaintiffs is not maintainable for non-joinder of necessary parties. The suit item No.6 property is the self acquired property of the 1st defendant. He also claims that he is entitled for 1/5th share in the suit properties. The property bearing Sy No. 44/1 is the suit item No.9 property. The 2nd defendant has formed 53 sites in the said property. He is also entitled for share in the sites. Some of the sites have been sold to M.C.Chandru and Smt. Annapoorna. He prays to decree the suit by allotting 1/5th share to him.

8. The defendants No.4 and 5 have admitted the claim of the plaintiffs. They have also demanded for 1/5th share and they pray to decree the suit.

9. The averments of the written statement of the 10 to 17 defendants are as under:-

The defendants No. 10 to 17 have also admitted the relationship between the parties. They have also admitted that Shamarao died. They further contended that the plaintiffs are not entitled for 1/5th share in the suit properties. They also entitled for share in the suit properties. The plaintiffs are entitled for 1/9th share in the suit properties. Therefore they pray to allot the 1/9th share to them and decree the suit accordingly.

10. The averments of the written statement of 18 and 19 defendants are as under:-

These defendants are admitted the relationship of the parties. They further admitted that the suit properties are the joint family properties of plaintiffs and the defendants. They submitted that the 1st defendant is managing the suit properties. The suit item No. 9 property is belonged to Smt. Sharadabai. The said property has been gifted to her by their parents

namely Lakshmibai and Shamarao. Therefore the plaintiffs and the defendants No.1 to 5 have no claim over suit item No. 9 property. The suit item No.6 property was allotted to the share of 1st defendant on behalf of the joint family under the Land Reforms Act. The defendants No.1 and 2 are enjoying the suit properties. The defendant No.1 and 2 are accountable for the income of the joint family properties. They are also entitled for the share. Therefore they prayed to grant the relief as per law.

11. The averments of the written statement of the 21st defendant are as under:-

This defendant contend that she is not a necessary party to the suit. The suit item No. 18 property is belongs to her. She has purchased the same in the year 1985 by her own income earned through tailoring work. She prays to dismiss the suit of the plaitniffs against item No. 18 of the suit property.

12. The averments of the written statement of the 23rd defendant are as under:-

This defendant contend that the suit of the plaiantiffs is not maintaianble either in law or on facts. This defendant admits that late Shamarao and Narayanarao and the defendants No.1 to 3 are the sons of Ramarao. She admits the death of Ramarao, Shamarao and Narayanarao. She denies that the plaintiffs and the defendants have not partitioned the suit properties. She denies that the suit properties are not the ancestral properties of plaiantiffs and the defendants. She also denies that the claim of the plaintiffs that no partition was taken palce till to-day is false. She also denies that the 1st defendant is managing the suit properties. She denies the convening of the panchayath by the plaintiffs. She denies the entire averments of the plaint and contended that she has purchased the site

bearing old No.5555/8 and new No. KA.5548 measuring east-west: 80 ft and north-south: 41 ft from its lawful owner the 2nd defendant through a registered sale-deed dtd: 08.11.1996 for a valuable sale consideration. The 2nd defendant has executed sale-deed for himself and on behalf of his minor son namely M.A.Purushothama and the 2nd defendant has sold that site for his legal necessities and for the benefit of the family. She is in possession of the said site from the date of sale-deed. The katha has been changed to her name. She has obtained licence from Magadi Town Municipality and constructed ground floor and the 1st floor by spending Rs. 30 to 35 lakhs and she is residing in the house with her husband and children. She is a bonafide purchaser of the site. She submits that the plaintiffs and defendant No.3 have colluded together and have filed false suit to trouble this defendant. The plaintiffs have suppressed the material facts and they have suppressed true facts. Therefore the plaintiffs are not entitled for any reliefs. The plaintiffs have filed this suit only to knock of the property of this defendant and to harass her and to trouble her. Therefore she prays to dismiss the suit.

13. On the basis of the pleadings of the parties the following issues have been framed by my learned predecessor.

1. Whether the plaintiffs are entitled for the relief of partition and separate possession in the suit schedule properties?
2. If so to what extent?
3. Whether the suit is bad for non-joinder of necessary parties?
4. Whether the 1st defendant proves that item No.3 and 6 are his self acquired properties?
5. Whether the court fee paid on the suit is sufficient?
6. What order or decree?

14. The 9th plaintiff has got examined herself as P.W.1, the 2nd plaintiff has got examined herself as PW.2, plaintiffs have got examined two witnesses as PW.3 and 4. They have got marked Ex.P.1 to P.16 documents.

15. The defendant No.15 has got examined himself as DW.1, the 3rd defendant has got examined himself as DW.2. The 16th defendant has got examined herself as DW.3. The 17(b) defendant has got examined as DW.4. The 2nd defendant has got examined as D.W.5. The defendants have got marked Ex.D.1 to D.39 documents. Both the parties have closed their side of evidence.

16. Heard the arguments. Perused the entire records.

17. My findings to the above issues are as follows.

issue No.1	Partly in the affirmative
issue No.2	Partly in the affirmative
issue No.3	In the negative
issue No.4	Partly in the affirmative
Issue No.5	In the negative
issue No.6	As per the final order

For the following

### **REASONS**

**18. ISSUE NO.1, 2 and 4:-** For the sake of convenience and also in order to avoid repetition of facts, I have taken these issues together for my discussion.

It is the case of the plaintiffs that the husband of the 1st plaintiff and the father of the plaintiffs No. 1 to 8 namely late Shamarao and the defendants No.1 to 3 and the husband of the 4th defendant namely Narayanarao are the brothers. Shamarao died about 50 years back. During the life time of Shamrao there was no partition of the suit proeprties between Ramarao and his sons. Narayanarao has also died. The 1st defendant is the elder person and he is managing the joint family properties. Till to-day no partition was taken place between the plaintiffs and the defendants. The plaintiffs further contended that during the life time of shamarao and Narayanarao they have demanded for partition with the defendants, the defendants have not effected the parttion. The 1st defendant has post poned the partition by saying one or the other reasons. After the death of Shamrao and Narayanarao the plaintiffs have also demanded for the partition of suit properties with the 1st defendant. The 1st defendant has not effected the partition. A pancyahath was taken place. Even in the panchayath also the 1st defendant has not conceded to effect the partition. The defendants are managing the suit properties. They are not distributing the income derived from the suit properties. The katha of the major items of the suit properties are standing in the name of 1st defendant. Some of the properties are standing in the name of mother of 1st defendant namely Sharadamma. The said Sharadamma also died. One of the suit property is standing in the name of Jyothirao who is the uncle of 1st plaintiff's husband. One of the suit property is in the name of the 2nd defendant. It is in joint katha. The defendants are enjoying all the suit properties. The defendants have no right to enjoy the suit properties and to receive the income of the suit properties without effecting the partition. The plaintiffs are entitle for 1/5th sahare in the suit properties. Therefore they have filed this suit and pray for decree of the suit.

19. During the pendency of the suit the defendant No.1 died. His L.Rs have

been brought on record. The defendant No.5 also died. His L.Rs have been brought on record. The defendant No.17 died. Her L.Rs. have also been brought on record. The plaintiffs and the defendants No. 18 to 21 have settled the matter. Therefore the defendants No. 18 to 21 have been deleted as per the orders dtd 16.07.2012. They have also deleted suit item No.17 and 18 properties. The suit has been continued against the other defendants. The defendants No. 22 and 23 have been impleaded afterwards.

20. It is the case of the defendant No.1 contend that the averments made in para No.2 to 5 of plaint are all false and not correct and the said averments have been concocted for the purpose of filing of the suit. He further contended that the suit of the plaintiffs is not maintainable in law and on facts. The suit is frivolous and vexatious. The plaintiffs have suppressed the true facts and come to the court with false story. The 2nd defendant has instigated the plaintiffs to file this suit. The 2nd defendant is managing the joint family properties. He further contend that the suit of the plaintiffs is bad for non-joinder of necessary parties. The plaintiffs have avoided to implead the L.Rs. of Mukthabai and two daughters of Ramarao namely Parvathibai and Girijabai. The plaintiffs have intentionally included the item No. 3 and 6 properties. The said properties are his self acquired properties. Except item No. 3 and 6 all other suit properties are the ancestral and joint family properties. In the said properties the plaintiffs are entitled for 1/5th share in suit item No.1, 2, 4, 5,7 to 17 properties. About one year back after the death of Ramarao there was misunderstanding arose between Ramarao and the 1st defendant with regard to the marriage of 1st defendant. The 1st defendant has not considered to marry the girl proposed by Ramarao. Therefore the 1st defendant left the house and started to live separately. Afterwards Ramarao died. After the death of Ramarao the 1st defendant got married and he started to live separately with his wife. The 1st

defendant tried to come back to the family house of late Ramarao. But at that time the 2nd defendant was not allowed to join the joint family house. Therefore he continued to live separately and started to cultivate the government land and he started to cultivate other private lands on lease basis. Considering the cultivation and enjoyment of the 1st defendant the government has granted 3 acres 20 gts of lands in Sy No. 22 and Darakhastu has been sanctioned in his name. After the Land Reforms Act came in to force, he filed an application for grant of Occupancy rights in respect of suit item No. 6 property. Hence, Land Tribunal has granted one acre of land in Sy No. 266/3. Therefore the item No.3 and 6 properties are his self acquired properties. On 12.05.1979 all the sons of Ramarao have come to an understanding and leading their respective life separately. They got divided the properties bearing Sy No. 227 of Magadi village. In the said Sy number the 1st defendant has constructed a small house within the area of 17 x 23 ft. The other persons are enjoying their portions separately. The 2nd defendant has got changed the katha of Sy No. 227 to the extent of his share. The 2nd defendant has got converted the suit item No.9 property into non-agricultural land and tried to sell the site formed therein without the consent of other co-owners. This defendant has questioned the 2nd defendant in that regard. Because of the said questioning the 2nd defendant has developed vengence against the 1st defendant. The 2nd defendant has instigated the plaintiffs to file this suit by including the self acquired properties of the 1st defendant. The 2nd defendant has also acquired some properties out of the joint family earnings. The said properties are also to be included and they are also laible for partition. He has also demanding for partition and separate possession of his share in the remaining suit properties except item No. 3 and 6. As the plaintiffs have filed this suit at the instigation of the 2nd defendant he prays to dismiss the suit.

21. It is the case of the 2nd defendant that he has admitted the relationship. He has also admitted the death of Ramarao. He has also admitted that there was no partition during the life time of Ramarao. He has also admitted that the 1st defendant is the elder person in the family. He has also admitted that the 1st defendant is managing the joint family properties. Till to-day no partition has taken place. He has supported the plaint averments and he prays to decree the suit.

22. The case of the defendant No.3 is that one Ramarao was the resident of Magadi. Sharadabai was his wife. The said Ramarao died about 50 years back. Sharadabai died about 20 years back. They had 10 children. 5 sons and 5 daughters. The 5 sons are Ranganathrao, Shamrao, Anatha rao, Shviaji rao and Narayanarao. Among the sons, Shamaraorao and Narayanarao died by leaving their wife and children. The plaintiffs are the wife and children of Shamarao. The defendants No.4 and 5 are the wife and son of late Narayanarao. The 5 daughters are Smt. Muthubai, Neelabai, Yashodabai, Parvathibai and Girijabai. The said daughters have been married long back. Among the daughters the 2nd and 3rd daughters are no more. Their children are alive. The plaintiffs have not impleaded the children of the said daughters. Therefore the suit of the plaintiffs is not maintainable for non-joinder of necessary parties. The suit item No.6 property is the self acquired property of the 1st defendant. He also claims that he is entitled for 1/5th share in the suit properties. The property bearing Sy No. 44/1 is the suit item No.9 property. The 2nd defendant has formed 53 sites in the said property. He is also entitled for share in the sites. Some of the sites have been sold to M.C.Chandru and Smt. Annapoorna. He prays to decree the suit by allotting 1/5th share to him.

23. The defendants No.4 and 5 have admitted the claim of the plaintiffs.

They have also demanded for 1/5th share and they pray to decree the suit.

24. It is the case of the defendants No. 10 to 17 that they have also admitted the relationship between the parties. They have also admitted that Shamarao died. They further contended that the plaintiffs are not entitled for 1/5th share in the suit properties. They also entitled for share in the suit properties. The plaintiffs are entitled for 1/9th share in the suit properties. Therefore they prays to allott the 1/9th share to them and decree the suit accordingly.

25. It is the case of the defendant No. 18 and 19 that they admitted the relationship of the parties. They further admitted that the suit properties are the joint family properties of plaintiffs and the defendants. They submitted that the 1st defendant is managing the suit properties. The suit item No. 9 property is belonged to Smt. Sharadabai. The said property has been gifted to her by their parents namely Lakshmibai and Shamarao. Therefore the plaintiffs and the defendants No.1 to 5 have no claim over suit item No. 9 property. The suit item No.6 property was allotted to the share of 1st defendant on behalf of the joint family under the Land Reforms Act. The defendants No.1 and 2 are enjoying the suit properties. The defendant No.1 and 2 are accountable for the income of the joint family properties. They are also entitled for the share. Therefore they prayed to grant the relief as per law.

26. It is the case of the defendant No.21 is that she is not a necessary party to the suit. The suit item No. 18 property is belongs to her. She has purchased the same in the year 1985 by her own income earned through tailoring work. She prays to dismiss the suit of the plaitniffs against item No. 18 of the suit property.

27. It is the case of the defendant No.23 is that the suit of the plaintiffs is not maintainable either in law or on facts. This defendant admits that late Shamarao and Narayanarao and the defendants No.1 to 3 are the sons of Ramarao. She admits the death of Ramarao, Shamarao and Narayanarao. She denies that the plaintiffs and the defendants have not partitioned the suit properties. She denies that the suit properties are not the ancestral properties of plaintiffs and the defendants. She also denies that the claim of the plaintiffs that no partition was taken place till to-day is false. She also denies that the 1st defendant is managing the suit properties. She denies the convening of the panchayath by the plaintiffs. She denies the entire averments of the plaint and contended that she has purchased the site bearing old No.5555/8 and new No. KA.5548 measuring east-west: 80 ft and north-south: 41 ft from its lawful owner the 2nd defendant through a registered sale-deed dtd: 08.11.1996 for a valuable sale consideration. The 2nd defendant has executed sale-deed for himself and on behalf of his minor son namely M.A.Purushothama and the 2nd defendant has sold that site for his legal necessities and for the benefit of the family. She is in possession of the said site from the date of sale-deed. The katha has been changed to her name. She has obtained licence from Magadi Town Municipality and constructed ground floor and the 1st floor by spending Rs. 30 to 35 lakhs and she is residing in the house with her husband and children. She is a bonafide purchaser of the site. She submits that the plaintiffs and defendant No.3 have colluded together and have filed false suit to trouble this defendant. The plaintiffs have suppressed the material facts and they have suppressed true facts. Therefore the plaintiffs are not entitled for any reliefs. The plaintiffs have filed this suit only to knock of the property of this defendant and to harass her and to trouble her. Therefore she prays to dismiss the suit.

28. In support of their claim the plaintiff No.9 has got examined herself as P.W.1 and she has deposed to the plaint averments and she prays to decree the suit.

29. The 2nd plaintiff has got examined herself as P.W.2. She has deposed to the plaint averments in her chief examination and prays to decree the suit.

30. The witness namely Narasingarao as PW.3 has deposed that he knows the plaintiffs and the defendants. The plaintiffs and defendants are residing in the joint family from their grand father's time. Even to-day they are residing in the joint family. The suit properties have not been partitioned between the plaintiffs and the defendants. The defendant No.1 is cultivating Sy No. 22 and Sy No. 256/3. The government and the Land Tribunal have granted the said lands to the defendant No.1. The other properties are the joint family properties. He is having cordial relationship with the plaintiffs and the defendants.

31. The other witness namely Narasimha Murthy as P.W.4 has deposed that he knows the plaintiffs and the defendants since from their grand father's time. The defendant No.1 was residing separately from the joint family and he is cultivating Sy No.22 and Sy No. 256/3 independently. The government has granted the said lands to him. The other suit properties are the joint family properties.

32. The plaintiffs have got marked Ex.P.1 to P.16 documents. Ex.P.1 is the RTC extract of Sy No. 58/1 of Hosahalli village for the year 2005-06, which is standing in the name of the 1st defendant, Ramarao, Anatharao, Shivajirao and Gayathribai. Ex.P.2 is the RTC extract of Sy No. 15 of Karagadahalli for the year 2006-07, it is standing in the name of the defendant No.1. Ex.P.3 is

the RTC of Sy No. 22 for the year 2006-07. It is standing in the name of the 1st defendant. Ex.P.4 is the RTC of Sy No. 13/7(b) of Tavarekere village for the year 2006-07 which is standing in the name of Ramarao. The name of Anantharao is mentioned in Column No.12(2). Ex.P.5 is the RTC extract for Sy No.41/P2 of Bychapura village for the year 2006-07 which is standing in the name of Anantharao. Ex.P.6 is the RTC extract of Sy No. 256/3 of Magadi village for the year 2006-07 which is standing in the name of defendant No.1 Ranganath rao. Ex.P.7 is the RTC extract for Sy No. 57/1 of Hosahalli village for the year 2005-06 which is standing in the name of Anantharao. Ex.P.8 is the RTC extract of Sy No. 50/1 of Hosahalli for the year 2005-06 which is standing in the name of Anantharao. Ex.P.9 is the RTC extract of Sy No. 44/1 of Hosahalli village for the year 2006-07 which is standing in the name of Ananarao. Ex.P.10 is the Assessment list of building and lands laible for taxation of property No. 1204 measuring 16 x 12 ft which is standing in the name of Sharadamma W/o Ramarao. Ex.P.11 is the Assessment list of building and lands laible for taxation of property No. 1204 measuring 23 1/2 x 12 ft which is standing in the name of Sharadamma W/o Ramarao. Ex.P.12 is the Assessment list of building and lands laible for taxation of property No. 1388 measuring 18 x 89 ft out of that country tiled house in 18 x 55 ft and vacant site measuirng 18 x 34 ft which is standing in the name of Sharadamma W/o Ramarao. Ex.P.13 is the Assessment list of building and lands laible for taxation of property No. 1209 measuring 16 x 25 ft out of that country tiled house in 25 1/2 x 12 ft which is standing in the name of Sharadamma W/o Ramarao. Ex.P.14 is the Assessment list of building and lands laible for taxation of property No. 1212 measuring 15 x 23 ft out of that country tiled hosue which is standing in the name of Sharadamma W/o Ramarao. Ex.P.15 is the Assessment list of building and lands laible for taxation of property No. 1201 measuring 24 x 16 ft out of that country tiled house is existing in 23 x 15 ft which is standing in the

name of Sharadamma W/o Ramarao. Ex.P.16 is the Assessment list of building and lands laible for taxation of property No. 839 measuring 56 x 18 1/2 ft out of that RCC building is existing in 35 x 15 ft and also shop existing in 15 x 18 ft area, which is standing in the name of Ramarao.

33. In support of their claim the defendant No.15 has got examined himself as DW.1 and he has deposed to the written statement averments of defendant No.10 to 17. He has also deposed on behalf of defendant No. 8 to 14. He has asked for 1/9th share for defendants No. 8 to 15 in the suit properties.

34 The defendant No.3 has got examined himself as DW.2 and he has deposed to the written statement averments and he has also prayed for 1/9th share for himself and he has no objections to decree the suit.

35. The defendant No.16 has got examined himself as DW.3. She has supported the plaintiffs case and she has sought for 1/9th share in the suit properties.

36. The defendant No.17(b) has got examined himself as DW.4. He has deposed that the suit properties are the ancestral properties. No partition has taken place. He has deposed that he has got 1/9th share. Therefore he prays for 1/9th share in the suit properties.

37. The 2nd defendant has got examined himself as DW.5. He has supported the case of the plaintiffs and he prays to decree the suit.

38. The defendants have got marked Ex.D.1 to D.39 documents. Ex.D.1 is the Record of right with regard to Sy No. 57/3, 58/1, 58/2. The name of

Ramarao is entered for Sy No.58/1. Ex.D.2 and 3 are the pahani extracts of Sy No. 58,59, 60, 12, 13, 14 to 16. Ex.D.4 is the Akar band extract of Sy No.15. Ex.D.5 is the Akar band extract of Sy No.15. Ex.D.6 is the Akar band extract of Sy No. 22. Ex.D.7 is the phodi extract of Sy No.22. Ex.D.8 is the RTC extract of Sy No.41 of Bychapura village for the year 1987-88 to 1992-93 which is standing in the name of Jokatirao. Ex.D.9 is the settlement extract of Sy No.256. Ex.D.10 is the application given by defendant to the Land Tribunal. Ex.D.11 is the Mahazar inrespect of Sy No. 256/3. Ex.D.13 is the Village Form No.III inrespect of Sy No. 256 to 260. Ex.D.14 is the Pakka book extract with regard to Sy No. 256. Ex.D.15 is the sketch inrespect of Sy No. 256. Ex.D.16 is the M.R.extract with regard to Sy No. 56/3, 57/1 and 58/2. Ex.D.17 is the copy of the RTC of Sy No. 50/1, 50/2. Ex.D.18 is the pahani extract with regard to Sy No. 48 to 52. Ex.D.19 is the memo of the Deputy Commissioner dtd:11.09.1991 addressed to the 1st defendant. Ex.D.20 is the letter written by Chief Officer, Town Municipality, Magadi dtd: 03.0.2009. Ex.D.21 is the RTC extract with regard to Sy No. 43, 44/1, 44/2. Ex.D.22 is the Assessment list of building and lands laible for taxation of property No. 1207, measuring 16 x 12 ft, vacant site standing in the name of Sharadamma W/o Ramarao. Ex.D.23 is the is the Assessment list of building and lands laible for taxation of property No. 1204, measuring 23 1/2 x 12 ft, having country tiled house which is standing in the name of Sharadamma W/o Ramarao. Ex.D.24 is the is the Assessment list of building and lands laible for taxation of property No. 1388, measuring 18 x 89 ft, which is standing in the name of Sharadamma W/o Ramarao. Ex.D.25 is the Assessment list of building and lands laible for taxation of property No. 1209, measuring 69 x 25 ft, which is standing in the name of Sharadamma W/o Ramarao. Ex.D.26 is the Assessment list of building and lands laible for taxation of property No. 1212, measuring 15 x 23 ft, which is standing in the name of Sharadamma W/o Ramarao. Ex.D.27 is

the Assessment list of building and lands laible for taxation of property No. 1207, measuring 24 x 16 ft, which is standing in the name of Sharadamma W/o Ramarao. Ex.D.28 is the Assessment list of building and lands laible for taxation of property No. 389, measuring 56 x 18 1/2 ft, which is standing in the name of Ramarao. Ex.D.219 is the voucher with regard to payment made for award amount. Ex.D.30 is the RTC extract with regard to Sy No. 252/4. Ex.D.31 is the copy of application given by the 1st defendant to the Municipality. Ex.D.32 is the certified copy of Mahazar dtd: 08.03.1965. Ex.D.33 is the copy of the sale-deed dtd: 30.4.2001. Ex.D.34 is the copy of the sale-deed dtd: 8.11.1996. Ex.D.35 is the copy of sale-deed dtd: 8.11.1996. Ex.D.36 is the copy of the order passed by the Sheristedar, Taluk office, Magadi. Ex.D.37 is the M.R.extract of M.R.No.3/2006-07. Ex.D.38 is the copy of the RTC extract of Sy No. 256/3 of Magadi village for the year 1970-71 to 74-75. Ex.D.39 is the copy of sale-deed dtd: 28.11.2006.

39. The parties have admitted the following facts:-

The parties have admitted the relationship among themselves. They have admitted that Ramarao was the original propositous and he died. He had 5 sons and 5 daughters. It is also admitted by the parties that Ramarao died about 50 years back. The sons of Ramarao namely Shamarao and Narayanarao have also died. One of the daughter by name Mukthabai died. It is also admitted by the parties that except suit item No. 3 and 6 properties, the other properties are all the joint family properties. The plaintiffs have got deleted the defendants No.18 to 21 and got deleted the suit item No.17 and 18 properties on 16.07.2012.The dispute according to the defendant No.1 is that the suit item No.3 and 6 properties are his self acquired properties, the other properties are the joint family properties. He is having 1/5th share in the remaining suit properties except suit item No.3 and 6. The defendants

No.2 to 5 have supported the case of the plaintiffs. They have also sought for 1/5th share each in the suit properties. The defendant No. 10 to 17 have also supported the claim of the plaintiffs and they have sought for 1/9th share in the suit properties. The defendants No.18 and 19 have also supported the claim of the plaintiffs and pray for decree of the suit. The defendants No.18,19,20 and 21 have been deleted. Therefore it is not necessary to say about their contention in this suit and also with regard to the item No. 17 and 18 properties. Hence, it is not necessary to discuss much with regard to the said admitted facts.

40. That according to the plaintiffs all the suit properties are the joint family properties. No partition was taken place in the family. They are entitled for 1/5th share jointly in all the suit properties.

41. That according to the defendant No.1 the suit item No.3 and 6 properties are his self acquired properties . He has acquired the said property No.3 through grant from the government and item No.6 property through the Land Tribunal. He himself was enjoying the said property as his self acquired properties. Therefore the plaintiffs or other defendants have no right over the suit item No.3 and 6 properties. Except those properties he has no objections to decree the suit.

42. The other defendants have claimed that the plaintiffs have suppressed the facts that Ramarao had daughters. Ramarao had 5 sons and 5 daughters. Therefore the plaintiffs are not entitled for 1/5th share, they are entitled for 1/9th share in the suit properties. To answer the said dispute of the parties, I am referring to the available evidence here onwards.

43. The parties to the suit have admitted the following facts:-

The defendants No.2 to 5 have supported the case of the plaintiffs. They have also sought for 1/5th share each in the suit properties. The defendant No. 10 to 17 have also supported the claim of the plaintiffs and they have sought for 1/9th share in the suit properties. The defendants No.18 and 19 have also supported the claim of the plaintiffs and prays for decree of the suit. The defendants No.18,19, 20 and 21 have been deleted. Therefore it is not necessary to say about their contention in this suit and also with regard to item No. 17 and 18 properties. The defendant No.23 has contends that she has purchased the suit item No.22 property from defendant No.2 and his son, she paid the amount to the said property. Therefore the said property is her self acquired property. She is the bonafide purchaser. Therefore the suit against the defendant No.23 against suit item No. 22 to be dismissed. Therefore it is not necessary to discuss much with regard to the admitted facts of the parties. I am referring to the available evidence to answer the dispute between the parties.

44. That according to the defendant No.1 the suit item No.3 and 6 properties are his self acquired properties. The plaintiffs have got marked Ex.P.3 with regard to suit itme No. 3 property. The defendants have got marked Ex.D.10 document. When we referred to Ex.D.10 the defendant No.1 has given an application for grant of land. It has been mentioned therein that the said land was cultivated by the family for past 50 years and there are total 16 members in the family. This clearly goes to show that the said item No.3 property was cultivated by the family from past 50 years and therefore it has been granted in the name of the defendant No.1. Even after the grant of

suit item No.3 property the defendant No.1 continued to be in the joint family and continued to enjoy the said property as a joint family property. He has not shown that he has exercised independent right excluding the family over the suit item No.3 property till filing of this suit. Therefore it can not be said that the suit item No.3 property is his self acquired property of defendant No.1.

45. The defendant No.1 has further contends that the suit item No.6 property is his self acquired property. It has been granted to him by the Deputy Commissioner. Therefore it is his self acquired property. The defendants have got marked Ex.D.36. When we referred to Ex.D.36 it shows that it has been enjoyed as a joint family property. The other family members have objected with regard to the katha of suit item No.6 property effected in the name of the defendant No.1. Therefore it clearly shows that it is the joint family property and it has been enjoyed by the joint family members as a whole. It can not be said that the suit item No.6 property is self acquired property of the defendant No.1.

46. The defendant No.23 has contend that she has purchased the suit item No.22 property as per the sale-deeds dtd: 08.11.1996 from the 2nd defendant and his son Purushothama. The defendants have got marked Ex.D.34 and D.35 documents. They are the certified copies of the sale-deeds. When we referred to the said documents it clearly shows that the defendant No.23 has purchased the suit item No.22 property on 08.11.1996 as per Ex.D.34 and D.35 from the 2nd defendant and his son. After the purchase of the said property the defendant No.23 is enjoying the said property as a bonafide purchaser. Therefore the available documentary evidence clearly establishes that the suit item No.22 property is not the joint family property of

the plaintiffs and it is the property of the defendant No.23 and she is the bonafide purchaser and suit item No.23 property was purchased from the defendant No.2 and his son as per Ex.D.34 and D.35 documents. Therefore the suit item No. 22 property can not be considered as joint family property of plaintiffs. The plaintiffs have not challenged the said sale deeds within the period of limitation of 3 years from the date of sale-deeds. Therefore it can not be said that the said sale deeds do not binds the rights of the plaintiffs. Therefore the claim of the plaintiffs with regard to item No. 22 property can not be acceptable as correct. The defendant No.3 himself has admitted that the defendants No.1 and 2 have sold the joint family properties as a kartha of the joint family for the benefit of the joint family to the defendant No.22 and others. Therefore the sale-deed executed by the defendant No.1 or defendant No.2 in favour of defendant No.22 and others is to be considered as valid sale-deeds and the defendant No.22 and others who purchased the sites acquires right over the property found in the said sale-deeds. Therefore the property sold by the defendant No.1 and 2 in favour of defendant No.22 and others can not be considered as the joint family properties of the plaintiffs.

47. That admittedly the late Ramarao had 5 sons and 5 daughters. Therefore the property of the late Ramarao to be divided in to 10 shares. The plaintiffs have claimed 1/5th share considering only the sons of late Ramarao. But it is not acceptable one. The defendants No. 3 and 10 to 17 have asked for 1/9th share. But they have not clarified and not produced proper and acceptable evidence to show that one of the daughter of Ramarao died and there are no L.Rs to her. Therefore the claim of defendants No. 10 to 17 that they are entitled for 1/9th share and the plaintiffs are also entitled for 1/9th share is not acceptable one as per the available evidence all the 5

sons and 5 daughters are entitled for a share each in the joint family properties. Accordingly, the L.Rs. of the deceased sons and deceased daughters of late Ramarao are entitled for 1/10th share of the deceased son or daughter of late Ramarao.

48. That as per the available evidence the plaintiffs have established their case in part. Therefore they are entitled for partial relief. Therefore I am holding **issue No.1 and 2 in partly affirmative and issue No.4 in the negative.**

**49. ISSUE NO.3:-** It is the case of the defendants that the suit plaintiffs is bad for non-joinder of necessary parties. The plaintiffs have not impleaded the daughters or the L.Rs. of daughters of Ramrao in the suit. Therefore the suit is bad for non-joinder of necessary parties. That after the filing of the written statement and by making necessary application the plaintiffs have impleaded the daughters and L.Rs. of daughters of late Ramarao. Therefore the plaintiffs have impleaded necessary parties. Therefore it can not be said that the suit is bad for non-joinder of necessary parties. Therefore I am holding this **issue in the negative.**

50. **ISSUE NO.5:-**It is the case of the defendants that the plaintiffs have filed this suit for partition. The plaintiffs have not paid the court fee properly. Therefore the suit is to be dismissed.

51. Admittedly the plaintiffs have filed this suit for partition and separate possession of their share in the suit schedule properties. The plaintiffs have valued the suit properties for Rs.10,00,000/- . They have calculated the court

fee u/s 35 (2) of Karnataka Court Fees and Suits Valuation Act and paid the requisite court fee. The office also has not raised any objections with regard to the payment of the court fee by the plaintiffs. Therefore it can not be said that the valuation made by the plaintiffs is not correct and the court fee paid by them is not sufficient. Therefore I am holding this **issue in the negative**.

**52. ISSUE NO.6**:- In view of my findings to issue No.1 to 5 and the reasons stated therein, I proceed to pass the following:-

### **ORDER**

**The suit of the plaintiffs is hereby partly decreed.**

**The suit of the plaintiffs is decreed with regard to suit item No. 1 to 16 properties and against defendants No.1 to 17.**

**The plaintiffs are entitle for partition and separate possession of their 1/10th share in the suit scheudle item No.1 to 16 properties.**

**The suit of the plaintiffs is dismissed with regard to suit item No.18 to 22 properties and against the defendants No.18 to 23.**

**The defendant No.1,2 3,4 and 5 are entitled for partition and separate possession of their 1/10th share in the suit item No.1 to 16 properties. They have to pay the court fee accoridngly.**

**The defendant No.10 to 17 are entitled for partition and separate possession of their 1/10th share in the suit item No.1 to 16 properties. They have to pay the court fee accoridngly.**

**Parties have to bear their own costs.**

**Draw Preliminary decree accordingly.**

( Dictated to the Stenographer, transcribed by him, corrected, signed and then pronounced by me in the open court on this the 28th day of June 2014.)

( **K. Mahadeva** ),  
Sr. Civil Judge & J.M.F.C.  
Magadi.

**ANNEXTURE**

1. List of the witnesses examined by the plaintiffs.

P.W.1	Smt. Gayathri bai	07.06.,2007
PW.2	Smt. Shobhabai	08.01.2008
PW.3	Narasingarao	20.02.2008
PW.4	Narasimhamurthy	17.03.2008

2. List of the witnesses examined by the defendants.

DW.1	Arunrao	23.09.2013.
DW.2	Shivajirao	07.10.2013.
DW.3	Parvathibai	07.10.2013.
DW.4	S.Naveen	07.10.2013.
DW.5	Anantharao	03.06.2014.

3. List of the documents exhibited by the plaintiffs.

Ex.P.1 to 9	RTC extracts
Ex.P.10 to 16	Assessment extracts.

List of lthe documents exhibited by the defendants.

Ex.D.1	RTC for Sy No.58/1
Ex.D.2	RTC extract.
Ex.D.3	RTC for Sy No. 15
Ex.D.4	Survey sketch
Ex.D.5	Akar band
Ex.D.6	Akar band for Sy.No.22.
Ex.D.7	Copy of phodi

- Ex.D.8 RTC for Sy No. 41
- Ex.D.9 Akar band for Sy No.256/3
- Ex.D.10 Form No.VII
- Ex.D.11 Mahazar.
- Ex.D.12 Hissa Tippani.
- Ex.D.13 RTC extract.
- Ex.D.14 Patta Book.
- Ex.D.15 Sy.sketch.
- Ex.D.16 RTC for Sy No.57/1.
- Ex.D.17 RTC for Sy No.50/1.
- Ex.D.18 Pahani for Sy No.50/1.
- Ex.D.19 Order of Dy.commissioner inrespect of Sy No.44/1.
- Ex.D.20 Conversion list.
- Ex.D.21 RTC for Sy No.44/1.
- Ex.D.22 to D.28 Assessment extracts.
- Ex.D.29 Receipt inrespect of Sy No.252/4.
- Ex.D.30 RTC extract.
- Ex.D.31 Bank NOC
- Ex.D.32 Copy of Mortgage deed.
- Ex.D.33 Copy of sale-deed dtd-30.04.2001.
- Ex.D.34-35 Copies of sale-deeds dtd: 08.11.1996.
- Ex.D.36 Order copy of Revenu court dtd-12.10.2011.
- Ex.D.37 Copy of Mutation.
- Ex.D.38 RTC extract.
- Ex.D.39 Copy of sale-deed dtd-28.11.1906.

**Sr. Civil Judge & J.M.F.C.**  
Magadi.