



O.S.NO.98/2017(J.)

C.R.P.67

Govt.of Karnataka

Form
No.9(Civil)
Title Sheet
for
Judgments in
Suits
(R.P.91)

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

Present: Sri. Shivakumar R., B.A.L., LL.B.,
Addl. Senior Civil Judge & JMFC, Magadi.

Dated: 26th Day of March 2026
ORIGINAL SUIT NO.98/2017

Plaintiffs

- : 1. Smt. Rudramma, (dead)
W/o. Chikkanna,
Aged about 89 years,
2. Sri. C. Thimmaiah,
S/o. Chikkanna,
Aged about 73 years,

Both are R/at: Hunjenahalli
Village, Maniganahalli,
Kuduru Hobli, Magadi Taluk,
Ramanagara District,
Ramanagara – 562 127.

(By Sri. K.R., Advocate)

V/s



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Defendants

:

1. Smt. Jayamma,
W/o. Chikkagangaiah,
Aged about 69 years,
2. Sri. Ramachandraiah,
Aged about 46 years,
3. Sri. Hanumanthaiah,
Aged about 43 years,
4. Sri. Srinivasa,
Aged about 38 years,

D2 to 4 are the sons of
Sri. Chikkagangaiah,
& R/at: Cheelur Hobli,
Magadi Taluk.
5. Smt. Hanumakka,
W/o. Badappa,
Aged about 68 years,
R/at: Muddahanumaiahna-
palya, Ramanahalli Post,
Honnuduke Post,
Gulur Hobli, Tumkur
District.
6. Smt. Lakshamma,
W/o. L. R. Nagarajappa,
Aged about 66 years,
R/at: No.67, 2nd Cross,
L. G. Ramanna Layout,
Laggere,



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Bangalore – 560 090.

(D1 to 4 by Sri. L.P.S., Advocate)
(D5 & 6 Exparte)

Date of institution of Suit	22.04.2017		
Nature of the suit	Partition & Separate Possession		
Date of commencement of recording of evidence	11.01.2023		
Date on which Judgment was Pronounced	26.03.2026		
Total duration	Year/s	Month/s	Day/s
	07	11	04

J U D G M E N T

The plaintiffs have filed this suit against the defendants for the relief of partition & separate possession of their 2/5th share in respect of the suit schedule properties by metes and bounds and for mesne profits.

2. The brief facts of the case of the plaintiffs are as follows:



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(a) It is the case of the plaintiffs that, originally the suit Schedule Properties were belonging to one Sri. Chikkanna, who died intestate during 1982 leaving behind the parties herein in the capacity i.e., First Plaintiff - the Wife, rest of them the children in the capacity more fully mentioned in the Cause Title above. Sri. Chikkagangaiah died on 13-10-2013 leaving behind the defendant No.1, 3 & 4 herein in the capacity of Wife and sons respectively being the legal heirs. As such, the parties herein continued with Joint family status with respect to the Undivided Properties more fully mentioned in the Schedule to the Plaint. However, during the life time of the said Chikkagangaiah, some of the Schedule Properties were mutated in the name of the First Defendant without the knowledge of the Plaintiffs herein and thus Khata also transferred in her name. Thus, subsequent to the death of the said Chikkagangaiah, the parties herein continued to be



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possession and enjoyment of the Schedule Properties as Tenants in common as on the date.

(b) The plaintiffs further stated that, during the life time of the Chikkagangaiah, the relationship amongst the family members were good and enjoyed the fruits of the Schedule Properties jointly. However, the relationship between the parties herein came to be strained on the death of Chikkagangaiah, mentioned above, the Defendants herein started indulging in strange attitude towards the Plaintiffs in all aspects. Under the circumstances, Plaintiffs suspecting the foul play on the part of the Defendants started with repeated oral requests with the Defendants to effect Partition and Separate possession of the Schedule Properties on various occasions during November and beginning of December, 2016 which continued on various dates including in the month of January 2017, which fell on deaf ears of the Defendants. In the meanwhile, the Defendant No.1 herein

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being possessed with the Khata in her favor, is making hectic efforts to alienate the Schedule Properties in favor of the intending buyers as per the close observation made by the Plaintiffs herein. For the purpose, division of Khata is being tried to be effected amongst the children of the deceased Chikkagangaiah to make easy way to dispose off the Schedule Properties. Having learnt the said factum, the Plaintiffs herein, demanded the Defendants to effect division and separate possession of the Schedule Properties which they are entitled to in accordance with law. The said demand was made during the mid of November 2016 and continued on several dates thereafter including on 28-12-2016 and on various dates repeatedly subsequent thereto including in the first week of January 2017. As against the same, the defendants herein instead of complying with the said demand, have resorted to dispose off the Schedule Properties in favor of the intending purchasers at the earliest possible with a



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view to cheat the Plaintiffs with respect to the shares which the Plaintiffs are entitled to in the eye of law. Hence, this suit.

3. In spite of service of suit summons, the defendant No.5 & 6 called out remained absent and placed exparte.

4. In pursuance of the suit summons, the defendant No.1 to 4 have appeared through their counsel. The defendant No.1 to 4 have filed the written statement and resisted the suit of the plaintiff. The defendant No.1 to 4 in their written statement they have admitted the relationship between the parties and denied the rest of the plaint pleadings and interalia contended that, one Chikkanna having four children, i.e., first son Thimmaiah who is the 1st defendant, the 2nd son Chikkagangaiah who is the husband of the 1st defendant and father of the defendant No.2 to 4, third daughter of Hanumakka who is the defendant No.5 and 4th daughter



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Lakshamma who is the defendant No.6. The said Chikkanna having ancestral properties, on 10.08.1965 after the death of the Chikkanna his two male children i.e., plaintiff No.2 and deceased Chikkagangaiah and Gujjappa (who is the grand-son of Hanumanthaiah) and Hanuma (who is the second son of the Hanumanthaiah) effected the partition through unregistered partition deed dated 10.08.1965. As per the aforesaid partition the following properties fallen to the share of the plaintiff No.2;

- a) Sy.No.41.1P measuring to an extent of 0.10 guntas.
- b) Sy.No.43/3 measuring to an extent of 0.30 guntas.
- c) Sy.No.46/4 measuring to an extent of 0.10 guntas.
- d) Sy.No.45/2 measuring to an extent of 0.04 guntas.
- e) Sy.No.41/5 measuring to an extent of 0.03



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guntas.

f) Sy.No.41/1 measuring to an extent of 0.04
guntas.

g) Sy.No.73/2 measuring to an extent of 0.04
guntas.

h) Sy.No.56 measuring to an extent of 0.34
guntas.

i) Sy.No.35/10 measuring to an extent of 0.05
guntas.

j) Sy.No.37/2 measuring to an extent of 2 acres 02
guntas.

The item No.(a) to (j) all are situated at Manniganahalli
Village,

k) The house, bearing Kaneshumari No.173,
measuring to an extent of East to West 10X10 and
North to South 11X28, situated at
Mallathimmaiahnapalya village.



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As per the partition the following properties fallen to share of the Chikkagangaiah who is the husband of the 1st defendant and father of the defendant No.2 to 4;

- a) Sy.No.48/5 measuring to an extent of 0.04 guntas.
- b) Sy.No.48/13 measuring to an extent of 0.03 guntas.
- c) Sy.No.48/14 measuring to an extent of 0.03 guntas.
- d) Sy.No.48/15 measuring to an extent of 0.02 guntas.
- e) Sy.No.48/18 measuring to an extent of 0.17 guntas.
- f) Sy.No.39/P measuring to an extent of 2 acres 01 guntas.
- g) Sy.No.57/9 measuring to an extent of 0.14 guntas.
- h) Sy.No.57/7 measuring to an extent of 0.02 guntas.
- i) Sy.No.57/7 measuring to an extent of 0.06 guntas.



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- j) Sy.No.57/8 measuring to an extent of 29 guntas.
- k) Sy.No.33/13 measuring to an extent of 0.04 guntas.
- l) Sy.No.35/13 measuring to an extent of 0.5 guntas.
- m) Sy.No.35/18 measuring to an extent of 0.03 guntas.
- n) Sy.No.35/18A, measuring to an extent of 0.04 guntas.
- o) Sy.No.36/1P, measuring to an extent of 0.07 guntas.

The item No.(a) to (o) all are situated at Manniganahalli village,

- p) Sy.No.73/1 measuring to an extent of 2 acres 10 guntas.
- q) Sy.No.73/2 measuring to an extent of 4 acres.
- r) Sy.No.31 measuring to an extent of 2 acres 22 guntas.
- s) Sy.No.33/1 measuring to an extent of 2 acres 05 guntas.



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- t) Sy.No.33/6 measuring to an extent of 1 acre 10 guntas.
- u) Sy.No.33/2 measuring to an extent of 1 acre 05½ guntas.
- v) Sy.No.33/3 measuring to an extent of 0.13½ guntas.
- w) Sy.No.33/4 measuring to an extent of 0.13½ guntas.
- x) Sy.No.104 measuring to an extent of 4 acres.
- y) The house, bearing Kaneshumari No.143, measuring to an extent of East to West 15 feet and North to South 18 feet situated at Mallethimmaiahnapalya village.

5. It is further contended that, after effect partition as stated above, all the revenue documents mutated in their names with respect to their shares. Since from the plaintiff No.2 and husband of the 1st defendant and father of the defendant No.2 to 4 were in peaceful possession and enjoyment over their respective shares. The said

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Chikkagangaiah died on 22.06.2011 leaving behind the defendant No.1 to 4 as his class-I legal heirs. The defendant No.1 to 4 are in continuing the peaceful possession and enjoyment over the share of the Chikkarangaiah. Such being the question of the joint possession does not arise at all.

6. It is further contended that, after the effect partition as stated above, the plaintiffs No.2 had been alienated the properties of his shares through various sale deeds to various persons and after effected the partition the plaintiff No.2 also purchased the properties in his name and also alienated the same to the third persons, but the plaintiff No.2 malafide intention suppressing the true facts, for grabbing the exclusive properties belongs to these defendants No.1 to 4 and also harassing the defendants they filed present suit. For all these grounds, the defendant No.1 to 4 prayed to dismiss the suit of the plaintiffs with exemplary cost.



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Note: It is relevant to note that, during the pendency of the above suit, the plaintiff No.1 was dead, her L.Rs., are already on record as plaintiff No.2 and defendants.

7. On the basis of the pleadings and other materials placed on record, my learned Predecessor has framed the following;

ISSUES

1. Whether the plaintiff proves that they and the defendants are members of Hindu Undivided Joint family members and suit schedule properties are the Joint Family Properties?
2. Whether the plaintiffs are entitled for partition and separate possession of their 2/5th share in the suit schedule properties?
3. Whether the defendant No.1 to 4 proves that the partition was effected in their family vide unregistered Partition Deed dated 10.08.1965?



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4. Whether the plaintiff is entitle for the relief sought for in this suit?

5. What order or decree?

8. In order to prove the case of the plaintiffs, the plaintiff No.2 himself is examined as PW-1 and got marked Ex.P1 to P39.

9. In order to falsify the case of the plaintiffs, the defendant No.1 to 4, the defendant No.3 has examined himself as DW-1 and examined one more witness namely Thimmegowda as DW-2 and got marked Ex.D1 to D17.

10. Heard the arguments of both sides.

11. The counsel for the plaintiffs have relied upon the following decision:

(i) AIR 2023 SC 330.

12. My findings to the above Issues are as follows:



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Issue No.1 : In the Negative.

Issue No.2 : In the Negative.

Issue No.3: In the Affirmative.

Issue No.4: In the Negative.

Issue No.5: As per the final order,

for the following:

REASONS

13. **Issue No.1 to 4:-** Since these issues are interconnected with each, taken up together for common discussion to avoid repetition of facts. The plaintiffs have filed this suit against the defendants for the relief of partition and separate possession of their 2/5th share together in respect of suit schedule properties by metes and bounds and also for mesne profits. I have already narrated in brief what is the case of plaintiffs is and what is the defense of the defendant No.1 to 4 is. The burden of proving issue No.1 and 2 is casted upon the plaintiffs and burden of proving the issue No.3 is casted upon the defendant No.1 to 4.

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14. In order to prove the case of the plaintiffs, the plaintiff No.2 has filed the examination-in-chief by way of affidavit and examined as PW-1. The PW-1 in his chief-examination he has reiterated the plaint pleadings and got marked Ex.P1 to P39.

15. In order to disprove the case of the plaintiffs. The defendant No.3 has filed the evidence affidavit and examined as DW-1, the DW-1 in his chief-examination he has reiterated the written statement pleadings. In order to support the case, the defendant No.1 to 4 has examined one more witness namely Thimmegowda as DW-2. The DW-2 in his chief-examination he has deposed that, he know the plaintiffs and defendants herein and he further deposed that, in the year 1965 the partition took place between the parties in respect of their family properties. In pursuance of the partition, they had put in separate possession of their respective shares.

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Accordingly, he has supported the case of the defendant No.1 to 4.

16. On meticulous reading of oral and documentary evidence adduced by both parties and other materials placed on record, admittedly the plaintiffs have filed the suit for the relief of partition and separate possession against the defendants of their 2/5th share together in respect of suit schedule properties and also for mesne profit. In the instant it is undisputed facts that, the defendant No.1 to 4 in their written statement they have not disputed their relationship between the parties. In order to substantiate the relationship between the parties, the plaintiffs have produced the copy of the Genealogical Tree, which is came to be marked as Ex.P1. The defendant No.1 to 4 have not denied the said document. Under these facts and circumstances and other materials



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placed on record, this Court come to conclusion that, the relationship of the parties narrated by the plaintiffs is true.

17. At the outset according plaintiffs, the suit schedule properties are the joint family properties of plaintiffs and defendants, they are in joint possession of the same without effecting the partition. When the plaintiffs demanded the defendants to effect partition of their legitimate share in respect of suit schedule properties, the defendants denied to allot the share of the plaintiffs in respect of suit schedule properties.

18. On the other hand, the defendant No.1 to 4 contended that, there is no joint family status between the plaintiffs and defendants. They have further contended that, the plaintiff No.2 and husband of the defendant No.1 and father of the defendant No.2 to 4 namely Chikkagangaiah and Gujjappa and also Hanuma have partitioned their family

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properties on 10.08.1965 through the unregistered partition deed.

19. It is to be noted that, the burden of proof is always lies upon the plaintiffs to prove that, the suit schedule properties are the joint family properties of plaintiffs and defendants. It is well settled Law that, in Hindu Law there is a general presumption that every Hindu family is presumed to be joint unless the contrary is proved. In order to prove that, the suit schedule properties are the joint family properties, apart from oral testimony of the PW-1, the plaintiffs have produced the documentary evidence, which are marked as Ex.P1 to P39.

20. In the present case on hand the defendant No.1 to 4 in their written statement they have taken a specific contention that, already partition took place between the plaintiff No.2 and husband of the defendant No.2 and father

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of the defendant No.2 to 4 and 2 others in respect of their family properties by virtue of the unregistered partition deed dated: 10.08.1965. In order to substantiate the contention of the defendant No.1 to 4 they have not produced the unregistered partition deed as stated supra. The defendant No.1 to 4 have produced the Ex.D1 – certified copy of the M.R.No.93/1983-84. On perusal of the same, it clearly shows that, the residents of Manniganahalli Village namely Thimmaiah S/o. Chikkanna (plaintiff No.2), Chikkagangaiah S/o. Chikkanna (husband of the defendant No.1 and father of the defendant No.2 to 4), Gujjappa S/o. Hanumanthaiah and Hanumarappa S/o. Hanumanthaiah have partitioned the properties mentioned below by virtue of the Panchayath Palupatti dated: 10.08.1965. As could be seen from the said exhibits, it clearly goes to show that, the plaintiff No.2, the husband of the defendant No.1 and two others have partitioned the properties mentioned in the Ex.D1. As per the



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mutation No.98/1983-84 the properties have been divided among the plaintiff No.2 and husband of the defendant No.1. The following properties i.e., Sy.No.43/3 to an extent of 30 guntas, 46/4 to an extent of 10 guntas, 45/2 to an extent of 0.06 guntas, 41/5 to an extent of 0.03 guntas, 41/11 to an extent of 0.04½ guntas, 35/10 to an extent of 0.05 guntas, 36/10 to an extent of 0.07 guntas, 56/10 to an extent of 0.34 guntas, 37/2 to an extent of 2 acres 9 guntas and 72/2 to an extent of 0.04½ guntas were fallen to the share of plaintiff No.2 and likewise the following properties Sy.No.48/15 to an extent of 0.05 guntas, 48/5 to an extent of 0.03 guntas, 48/13 to an extent of 0.03 guntas, 48/14 to an extent of 0.03 guntas, 39/1 to an extent of 2 acres 1 guntas, 38/14 to an extent of 0.04 guntas, 57/8 to an extent of 0.19 guntas, 35/1BA to an extent of 3 1/3 guntas, 48/18 to an extent of 0.17 guntas, 57/9 to an extent of 0.14 guntas, 57/9 to an extent of 0.2 guntas, 57/7 to an extent of 0.06 guntas, 36/13



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to an extent of 0.01¼ guntas, 36/1 to an extent of 0.07 guntas were fallen to the share of husband of the defendant No.1. In pursuance of the mutation, the name of the plaintiff No.2 has been reflected in the RTC extracts, which are marked as Ex.P2 to P10, 20 & 21. So far as, share of the husband of defendant No.1 and father of the defendant No.2 to 4 is concerned, after his death name of his wife shown in the RTC Extracts by way of inheritance, which are came to be marked as Ex.P12 to 16, 18, 21, 23 to 30.

21. It is relevant to note that, Ex.D6 is the certified copy of the registered sale deed dated: 25.06.2015 executed by the plaintiff No.2 in favour of K. S. Annapurna. On perusal of the recitals of the said document, it appears that, the item No.2 to 3 are the ancestral property of the vendor, who acquired the same through a partition deed dated: 10.08.1965, thereafter the children of the vendor herein have

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further released their entire share through a Release Deed dated: 08.05.2015. Ex.D9 is the certified copy of the registered Sale Deed dated: 25.06.2015 executed by the plaintiff No.2 in favour of Krishnappa. In the said sale deed there is a recitals that, the land bearing Sy.No.43/4 to an extent of 10 guntas of Manniganahalli Village having acquired by the same of the plaintiff No.2 by virtue of the partition deed dated: 10.08.1965. Accordingly, the khata of the said property was mutated in his name as per M.R.No.93/1983-84. Hence, the said property is the absolute property of its vendor (Plaintiff No.2). The said documents were executed by the plaintiff No.2 in undisputed point of time. Ex.D7 & 8, 14 to 17 are the RTC Extracts. On perusal of the said exhibits, it clearly established that, already partition was effected as per the partition deed dated: 10.08.1965.



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22. It is relevant to note that, the mutation register extract i.e., Ex.D1 was effected in the year 1983-84, the said mutation remained unchallenged. On going through the documents, it is crystal clear that, the factum of the partition has been evidence in public documents. It is clear that, the factum of the partition have been evidenced in public documents. At this juncture, it is pertinent to refer the Judgment rendered by the Hon'ble Apex Court of India in the case of **Vineeta Sharma V/s. Rakesh Sharma & Ors.**, the same is reported in **(2020) 9 SCC 1**. In the said decision, the Hon'ble Apex Court of India has held that,

'In view of the rigor of provisions of explanation to Section 6(5) of the Act of 1956, a plea of oral partition cannot be accepted as the statutory recognized mode of partition effected by a deed of partition duly registered under the provisions of the Registration Act, 1908 or effected by a decree of a Court. However, in exceptional cases where plea of



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oral partition is supported by public documents and partition is finally evinced in the same manner as it it had been affected by a decree or a Court, it may accepted.'

23. On perusal of the ratio laid down in the aforesaid decision is aptly applicable to the present case on hand. As per the view taken by the Hon'ble Apex Court of India in the aforesaid decision, if the public document shows that, partition it can be considered division of properties effected in the family. In the instant case also the factum of partition reflected in the revenue documents. Therefore, it could be inferred that, already partition has been taken place in the family of the plaintiffs and husband of the defendant No.1 and two others in their family and the same has been acted upon. Therefore, it cannot be held that, as on the date of filing of this suit, the suit schedule properties are remained as joint family properties of plaintiffs and defendant No.1 to 6.



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It is to be noted that, the defendant No.5 & 6 are the daughters of the plaintiff No.1. In the case of **Vineeta Sharma V/s. Rakesh Sharma and others** in paragraph No.126 it is held that,

“The protection of rights of daughters as coparcener is envisaged in the substituted Section 6 of the Act of 1956 recognizes the partition brought about by a decree of a Court or effected by a registered instrument. The partition so effected before 20.12.2004 is saved.”

24. Hence, the defendant No.5 & 6 are not entitled for any share in the suit schedule properties. As could seen from the Ex.P1 to 39 are not establish the contention of the plaintiffs, the all the documents are clearly established that, there was already partition effected and there is no joint family status in the plaintiffs and defendants. On perusal of the evidence available on record and other materials available



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on record, the plaintiffs have failed to prove that, themselves and defendants are the members of the Hindu undivided joint family and suit schedule properties are their joint family properties. The defendant No.1 to 4 have proved that, there was a partition effected in their family on 10.08.1965. Hence, the plaintiffs are not entitled for any share in the suit schedule properties. Under these facts and circumstances, the plaintiffs are not entitled for any share. With great respect I have perused the citation relied upon by the plaintiffs. The facts of that case and the present case are different. Hence, the citation relied upon by the plaintiffs' counsel is not applicable to the present case on hand. For considering all these reasons, I answer the Issue No.1, 2, 4 in the Negative and Issue No.3 in the Affirmative.

25. **Issue No.5:** In view of my above findings, I proceed to pass the following :



ORDER

The suit of the plaintiffs is hereby dismissed with cost.

Draw decree accordingly.

(Dictated to the Typist on computer, typed by her, corrected by me and then pronounced in the open Court on this the **26th day of March, 2026.**)

(SHIVAKUMAR.R)
ADDL. Sr. CIVIL JUDGE AND
J.M.F.C, MAGADI.

ANNEXURE

List of witness examined for the plaintiffs:

PW.1 : Sri. Thimmaiah

List of documents exhibited for the plaintiffs:

Ex.P1 : Notarized Genealogical Tree
Ex.P2 to 30: RTC Extracts
Ex.P31 & 32: Demand Register Extracts
Ex.P33 : C.C. of the Sale Deed dtd: 24.02.1961
Ex.P34 : C.C. of the Sale Deed dtd: 30.04.65
Ex.P35 : C.C. of the Sale Deed dtd: 30.04.65
Ex.P36to38: C.C. of the Sale Deeds
Ex.P39 : Death Certificate of Chikkanna

List of witnesses examined for the defendants:

DW-1 : Sri. Hanumanthaiah
DW-2 : Sri. Thimmegowda



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List of documents exhibited for the defendants:

- Ex.D1 : Mutation Register Extract
- Ex.D2 : Online Copy of the Absolute Sale Deed
dtd: 11.12.2014
- Ex.D3to5 : R.T.C. Extracts
- Ex.D6 : Online Copy of the Absolute Sale Deed
dtd: 25.06.2015
- Ex.D7 & 8 : RTC Extracts
- Ex.D9 : Online Copy of the Absolute Sale Deed
dtd: 25.06.2015
- Ex.D10 : RTC Extract
- Ex.D11 : Mutation Register Extract
- Ex.D12 : RTC Extracts
- Ex.D13 : Registered Sale Deed dtd: 23.07.2014
- Ex.D14 to 17: RTC Extracts

**(SHIVAKUMAR R.,)
ADDL. Sr. CIVIL JUDGE AND
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