

KASM500030802022



**IN THE COURT OF
PRL CIVIL JUDGE AND JMFC AT SHIKARIPURA,
SHIVAMOGGA
(Presided Over by)**

Smt. Rashmi.S,
B.A.L., L.L.B., M.A.,
Prl. Civil Judge and JMFC,
Shikaripura.

DATED 25th DAY OF JULY, 2026

O.S.No.206/2022

Plaintiff:	1. Chennamma W/o Chennappa, Aged about 62 years, Household work, R/o Nellikoppa Village, Anavatti Hobli, Soraba Taluk, Shivamogga District. (By Sri.N.K/H.N., Advocate)
-V/s-	
Defendants :	1.Mallamma W/o Eshwarappa, Aged about 90 years, Household work, R/o Shiddihalli Village, Thalagunda Hobli, Shikaripura Taluk, Shivamogga District.

	2. Halamma W/o Channabasappa, Aged about 65 years, Household work, Gangavalli Village, Anavatti Hobli, Soraba taluk, Shivamogga District. 3. Mruthunjayappa S/o Eshwarappa, Aged about 64 years, Agriculturist, R/o Shiddihalli Village, Thalagunda Hobli, Shikaripura Taluk, Shivamogga District. 4. Vinodamma W/o Shivappa, Aged about 61 years, Household work, R/o Yammiganuru Village, Herekeruru Taluk, Haveri District. 5. Manjappa S/o Eshwarappa, Aged about 64 years, Agriculturist, R/o Shiddihalli Village, Thalagunda Hobli, Shikaripura Taluk, Shivamogga District. 6. Prema W/o Hanumanthappa, Aged about 58 years, Household work, Gorachikonda Village,
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	Herekeruru Taluk, Haveri District. 7. Savithramma W/o Gangadhara, Aged about 55 years, Household work, R/o Koratikere Village, Thalagunda Hobli, Shikaripura Taluk, Shivamogga District. (D.1, D.2, D.4, D.6 & D.7 By Sri. V.G., & D.3 & 5 by Sri. E.Y.S/ N.D., Advocates)

Date of institution of suit	:	17-08-2022		
Nature of suit	:	Partition and Separate possession		
Date of recording evidence	:	23-08-2023		
Date of pronouncement of judgment	:	25-07-2026		
Total duration	:	Year/s	Month/s	Day/s
		04	09	07

J U D G M E N T

The instant suit filed by the Plaintiff seeking for the relief of Partition and Separate possession for 1/8th share in the suit schedule properties and such other reliefs.

:ಶೆಡ್ಯೂಲ್:

1) ಶಿವಮೊಗ್ಗ ಜಿಲ್ಲೆ, ಶಿಕಾರಿಪುರ ತಾಲ್ಲೂಕು, ತಾಳಗುಂದ ಹೋಬಳಿ, ಶಿಡ್ಡಿಹಳ್ಳಿ ಗ್ರಾಮದ ಸ.ನಂ.1/1 ರಲ್ಲಿ ಒಟ್ಟು ವಿಸ್ತೀರ್ಣ 6 ಎಕರೆ 35 ಗುಂಟೆ ಇದ್ದು, ಈ ಪೈಕಿ 0-03 ಗುಂಟೆ ಖರಾಬು ವಜಾಜಾತ ಉಳಿದ 06 ಎಕರೆ 32 ಗುಂಟೆ ಖುಷ್ಕಿ ಜಮೀನು. ಇದರ ಆಕಾರ 3 ರೂ 33 ಪ್ರೆಸೆಗಲಾಗಿರುತ್ತದೆ. ಇದಕ್ಕೆ ಚಕ್ಕುಬಂದಿ:- ಸರ್ವೆ ಬಾಂದುಕಲ್ಲುಗಳೇ ಗಡಿ ಗುರುತುಗಳು ಆಗಿರುತ್ತವೆ.

2) ಶಿವಮೊಗ್ಗ ಜಿಲ್ಲೆ, ಶಿಕಾರಿಪುರ ತಾಲ್ಲೂಕು, ತಾಳಗುಂದ ಹೋಬಳಿ, ಶಿಡ್ಡಿಹಳ್ಳಿ ಗ್ರಾಮದ ಸ.ನಂ.1/2 ರಲ್ಲಿ ಒಟ್ಟು ವಿಸ್ತೀರ್ಣ 5 ಎಕರೆ 26 ಗುಂಟೆ ಇದ್ದು, ಈ ಪೈಕಿ 0-03 ಗುಂಟೆ ಖರಾಬು ವಜಾಜಾತ ಉಳಿದ 05 ಎಕರೆ 23 ಗುಂಟೆ ಖುಷ್ಕಿ ಜಮೀನು. ಇದರ ಆಕಾರ 2 ರೂ 74 ಪ್ರೆಸೆಗಲಾಗಿರುತ್ತದೆ. ಇದಕ್ಕೆ ಚಕ್ಕುಬಂದಿ:- ಸರ್ವೆ ಬಾಂದುಕಲ್ಲುಗಳೇ ಗಡಿ ಗುರುತುಗಳು ಆಗಿರುತ್ತವೆ.

3) ಶಿವಮೊಗ್ಗ ಜಿಲ್ಲೆ, ಶಿಕಾರಿಪುರ ತಾಲ್ಲೂಕು, ತಾಳಗುಂದ ಹೋಬಳಿ, ಶಿಡ್ಡಿಹಳ್ಳಿ ಗ್ರಾಮದ ಸ.ನಂ.21/1 ರಲ್ಲಿ ಒಟ್ಟು ವಿಸ್ತೀರ್ಣ 2 ಎಕರೆ 30 ಗುಂಟೆ ಇದ್ದು, ಈ ಪೈಕಿ

0-07 ಗುಂಟೆ ಖರಾಬು ವಜಾಜಾತ ಉಳಿದ 02 ಎಕರೆ 23 ಗುಂಟೆ ತರಿ ಅಡಿಕೆ ಜಮೀನು.

ಇದರ ಆಕಾರ 13 ರೂ 71 ಪೈಸೆಗಳಾಗಿರುತ್ತದೆ. ಇದಕ್ಕೆ ಚಕ್ಕುಬಂದಿ:- ಸರ್ವೆ ಬಾಂದುಕಲ್ಲುಗಳೇ ಗಡಿ ಗುರುತುಗಳು ಆಗಿರುತ್ತವೆ.

4) ಶಿವಮೊಗ್ಗ ಜಿಲ್ಲೆ, ಶಿಕಾರಿಪುರ ತಾಲ್ಲೂಕು, ತಾಳಗುಂದ ಹೋಬಳಿ, ಶಿಡ್ಡಹಳ್ಳಿ ಗ್ರಾಮದ ಸ.ನಂ.23/1 ರಲ್ಲಿ ಒಟ್ಟು ವಿಸ್ತೀರ್ಣ 3 ಎಕರೆ 31.08 ಗುಂಟೆ ಇದ್ದು, ಈ ಪೈಕಿ 0-00.08 ಗುಂಟೆ ಖರಾಬು ವಜಾಜಾತ ಉಳಿದ 03 ಎಕರೆ 31 ಗುಂಟೆ ತರಿ ಅಡಿಕೆ ಜಮೀನು. ಇದರ ಆಕಾರ 16 ರೂ 95 ಪೈಸೆಗಳಾಗಿರುತ್ತದೆ. ಇದಕ್ಕೆ ಚಕ್ಕುಬಂದಿ:- ಸರ್ವೆ ಬಾಂದುಕಲ್ಲುಗಳೇ ಗಡಿ ಗುರುತುಗಳು ಆಗಿರುತ್ತವೆ.

2. The brief facts of the Plaintiffs case are:

The Plaintiff is the daughter of Defendant No.1, Defendant No.2 to 7 are the siblings of the Plaintiff. The father of the Plaintiff demised 18 years back. After the death of her father, the Plaintiff and the Defendants are living in the Hindu Undivided Joint Family. The Plaintiff and the Defendants are the members of Undivided Hindu Family and the properties are the ancestral properties of the Plaintiff and the Defendants. The suit schedule properties are the ancestral properties of the father of the Plaintiff and after his

death, the properties are fallen to the share of the Plaintiff and the Defendants and they are owners in possession over the properties. The Plaintiff is entitled for 1/8th share in the suit schedule properties. When the Plaintiff requested for her share, the Defendant No.3 and 5 have denied the share. In the year 2022, it has come to the knowledge of the Plaintiff that, the Defendant No.3 and 5 have colluded and created a document and also changed the revenue records on the basis of the said document. The Plaintiff is entitled for 1/8th share in the suit schedule properties. But, the Defendant No.3 and 5 have created a document against law which is not binding on the share and rights of the Plaintiff. Hence, being constrained the Plaintiff has filed the above suit.

3. In pursuance of issuance of summons, the Defendant No.1 to 7 have appeared before the Court through their counsel. The Defendant No.3 filed written statement and Defendant No.5 adopted the same by filing memo.

4. The brief facts of the written statement of the Defendant No.3 is as under:

a) The Defendant No.3 has admitted the relationship between the Plaintiff and Defendants and also admitted that, Plaintiff is the daughter of Defendant No.1 and remaining Defendants are the sister and brothers of Plaintiff. Apart from that, they have denied all other averments of the plaint. It is the contention of the Defendants that, the father of Plaintiff i.e., Eshwarappa died in the year 1994. The Defendant and his brother Manjappa have already effected partition orally due to clashes and conflict between women folk in the family and they are living separately. Further, the Plaintiff has not produced any documents to show the properties are the ancestral properties of the Plaintiff and the Defendants. The Plaintiff and the Defendants are not the joint owners as there is already partition effected in the family and therefore, Plaintiff is not entitled for any share in the suit properties.

b) Further, it is denied the Defendant No.3 and 5 have colluded and fabricated a document and on the basis of the same they have obtained Khatha and RTCs in their names. The Defendant No.3 and 5 are residing separately since the 1994 and they have already divided the properties and they are in separate possession over the same. The Defendant No.3 has celebrated the marriage of Defendant No.6 and 7 by spending huge amount and also has given household articles worth more than 5 lakhs. The father of the Plaintiff was not in good health condition, hence, the male members of the family i.e., Defendant No.3 and 5 earned livelihood and also money for maintenance. The Defendants have discharged their part of duties towards their sisters and the Defendant No.3 and 5 had incurred huge expenses towards the husband of the Plaintiff during his hospitalization. Further, during the lifetime of the Siddappa i.e., grand-father of the Defendant No.3, he has given the land measuring 3 acres 31 guntas, situated Shiddihalli Village in Sy.No.23/1 to the Defendant No.3 out of love and affection. During the lifetime

of Eshwarappa, the Defendant No.3 was in exclusive possession and enjoyment of the said property since lifetime of his grand-father of the Siddappa. Moreover, the Plaintiff and her sisters are well aware of the fact that, grand father Siddappa has allotted the property for the benefit of the Defendant No.3. Since, 50 years, the Defendant No.3 is in exclusive possession and enjoyment of the suit item No.4 and thereby he has perfected his title by way of adverse possession which is within the knowledge of the Plaintiff and their remaining sisters. The Plaintiff has come before the Court suppressing the material fact. The Plaintiff has not given appropriate boundaries and description of the properties as per law. Hence, for this reason alone, the suit is liable to be dismissed. Though the Plaintiff has knowledge about the document which is alleged to be prepared by the Defendant No.3 and 5, she has not challenged the said document. The Plaintiff is not entitled to get any relief over the suit schedule properties. Hence, on the above grounds prays to dismiss the suit.

5. Based upon the rival pleadings of the parties, this Court has framed the following issues:

ISSUES

1. Whether the Plaintiff proves that the suit schedule properties are the ancestral joint family properties?
2. Whether the Plaintiff proves that the Defendant No.3 and 5 have got changed katha of the suit schedule properties by fabricating a document in collusion?
3. Whether the Defendant No.3 and 5 prove that grand father by name Siddappa has given item No.4 property to Defendant No.3 out of love and affection?
4. Whether the Defendant No.3 and 5 prove that Defendant No.3 has perfected his title over the suit schedule item No.4 of the properties?
5. Whether the Defendant No.3 and 5 prove that suit of the Plaintiff is liable for dismissal for lack of showing appropriate description and identity of the properties?
6. Whether the Plaintiff is entitled for the relief as claimed?
7. What order or decree?

6. In order to substantiate their case, the GPA holder Channappa got examined as P.W-1 and got marked document Ex.P1 to Ex.P7 and closed his side.

7. On the other hand, in order to substantiate the defence of the Defendants, the Defendants No.5 got examined as DW-1 and got marked documents from Ex.D1 to Ex.D17 and got examined two witness by name Veerappaiah as DW-2 and Chandrashekharagowda as DW-3 and closed their side.

8. Heard arguments on both sides and perused the materials on record.

9. On appreciation of the oral and documentary evidence on record, the findings of this Court on the above issues are as hereunder;;

Issue No.1	: In the Affirmative
Issue No.2	: In the Negative
Issue No.3	: In the Negative
Issue No.4	: In the Negative
Issue No.5	: In the Negative

Issue No.6 : In the Affirmative
Issue No.7 : As per the final order,
for the following ;

: REASONS :

10. ISSUE NO.1:- As it could be seen from the rival pleadings, the relationship between the Plaintiff and the Defendants are not disputed. The only crux of the dispute between the parties is that according to the Plaintiff, the Plaintiff and the Defendants are the members of joint family and the suit properties are joint family properties of the Plaintiff and the Defendants. The Plaintiff being the daughter of the deceased Eshwarappa is entitled for 1/8th share in the suit schedule properties as there is no partition effected in the joint family.

11. On the other hand, according to the Defendants, the Defendant and his brother effected partition orally and living separately since 1994. The Plaintiff has not produced any documents to show that the properties are ancestral and joint family properties. The Defendant No.3 and 5 have

divided the properties. The grand father of the Defendant No.3 has given item No.4 property to the Defendant No.3 out of love and affection and he is in the possession of the property since 1972. Hence, the Plaintiff is not entitled for any share in the suit properties.

12. Before, going through the case on hand, it is worth to know about the concept of ancestral and joint family properties. In this regard, it is relevant to refer the decision of Hon'ble High court of Karnataka reported in **(2009) 2 KCCR 1206 (Mahadeva Raja Nayaka Vs K. Shashidara)**, wherein the Hon'ble High Court has discussed about ancestral, joint family and separate properties in detail at Para No. 15 to 18, it read thus.

***15.** In this context, it would be relevant to note that the property under Hindu Law can be classified under two heads: (1) Coparcenary and (2) separate property. Coparcener/property is again divisible into (i) ancestral property and (ii) joint family property which is not ancestral. This latter kind of the property*

consists of property acquired with the aid of ancestral property and property acquired by individual coparceners without such aid, but treated by them as property of the whole family. Joint family property is qualified in a twofold manner viz., it must be a joint family property and it must also be ancestral. It is obvious that there must have been a nucleus of joint family property before an ancestral joint family property can come into existence because the word ancestral connotes descent and hence, preexistence. Where there is ancestral joint family property, every member of the family acquires in it a right by birth which cannot be defeated by individual alienation or disposition of any kind except under certain peculiar circumstances. This is equally true of joint family property, where a sufficient nucleus of the property in the possession of the members of a joint family has come to them from a paternal ancestor, the presumption is that the whole property is ancestral and any member alleging that it is not, will have to prove his self-acquisition. Similarly, where property is admitted or proved to be joint family property, which may not have been acquired with the aid of ancestral property, but if the same has been treated by them as the property of the whole family, it is subject to exactly

the same legal incidents as the ancestral joint family property.

16. *Thus, coparcenary property means and includes (1) ancestral property. (2) acquisitions made by the coparceners with the help of ancestral property. (3) Joint Page: 501 acquisitions of the coparceners even without such help provided there was no proof of intention on their part that the property should not be treated as joint family property and (4) separate property of the coparceners thrown into the common stock.*

17. *The term "ancestral property has a special meaning in Hindu Law. That means only such property as is inherited by a male from father, father's father and father's father's father and such inheritor's son, son's son and son's son's son get an interest in it by birth. Hence, unless there is a nucleus of ancestral property with the aid of which the acquisitions are made, the acquisitions cannot be included within the concept of coparcenary property available for partition between the members of the joint family. The coparcenary property is the property held by a coparcenary absolutely and free of all*

claims from the rest of the coparceners which is known as separate or self-acquired property.

18. *Separate property of a person is property in respect of which other coparceners can claim no right and on the death of the coparcener, the same is succeeded to not by survivorship but by inheritance either testamentary or by intestate succession.*

13. Now, let us see whether Plaintiff is able to prove that suit schedule properties are ancestral and joint family properties of themselves and the Defendants. In order to substantiate the same, the GPA holder of the Plaintiff has entered into the witness box and reiterated the plaint averments and got marked Ex.P1 to Ex.P.7. Ex.P1 is the GPA executed by the Plaintiff in favour of Channappa, who is the husband of the Plaintiff. Ex.P2 is the RTC extract with respect to item No.1, which reflects the name of the Defendant No.5 Manjappa to the extent of 06 acres 32 guntas. The column No.10 shows the katha has been transferred to the name Defendant No.5 on the basis of

partition. Ex.P3 is the RTC extract with respect to item No.2, which reflects the name of Defendant No.3 to the extent of 05 acres 23 guntas. The column No.10 shows that, the possession is vide partition. Ex.P4 is the RTC extract with respect to item No.3, which reflects the name of Defendant No.5 to the extent of 02 acres 23 guntas. The column No.10 shows the possession is vide partition. Ex.P5 is the RTC extract with respect to item No.4 which reflects the name of Defendant No.3 to the extent of 03 acres 31 guntas and the possession is vide partition. Ex.P6 is the Study Certificate of the Plaintiff, which shows that she is the daughter of the Eshwarappa. Ex.P7 is the MR extract with respect to the suit schedule properties, wherein the property stands in the name of the Defendant No.3 and 4 and the katha has been transferred vide MRH No.4/2021-22 vide partition.

14. On careful perusal of these documents, it could be clearly seen that, the properties in item No.1 to 4 stands in the name of Defendant No.3 and 5. It is the contention of the Plaintiff that, the suit schedule properties are the ancestral

and joint family properties of the Plaintiff and the Defendants. But in order to substantiate the same, the Plaintiff has not produced any documents before this Court. The documents produced by the Plaintiff are of recent documents which reflects the name of the Defendants No.3 and 5. It is settled principle of law that in order to consider any property as an ancestral property, it shall be devolved from the fourth generation and if any property is to be considered as a joint family property, it should be acquired through joint family income or nucleus or thrown into common hotchpot. But herein this case, the Plaintiff has not produced any documents to show that, the properties are ancestral properties.

15. It is the contention of the Defendant that, the properties stood in the joint name of the Defendant No.3 and 5 and therefore they have got executed partition deed on 02.02.2021 and based on the said document, the revenue documents mutated to their names. Further the item No.4

property stood in the name of grand father of the Plaintiff and the Defendants and out of love the said grand-father has given property in item No.4 to the Defendant No.3.

16. To substantiate the same, the Defendant No.3 has entered into the witness box and got examined himself as DW.1 and got marked as DW.1 and produced document from Ex.D1 to Ex.D17 and also got marked other two witnesses Virappaiah as DW.2 and Chandrashekara as DW.3.

17. Ex.D1 is the registered partition deed between the Defendant No.3 and 5 with respect to the suit schedule properties.

18. The recitals in the partition deed says that,

“ನಾವು ಈ ಹಿಂದೆ ಅವಿಭಕ್ತ ಕುಟುಂಬದಲ್ಲಿ
ಜೀವಿಸುತ್ತಿದ್ದು , ಈಗ ನಮ್ಮಲ್ಲಿ ಭಿನ್ನಾಭಿಪ್ರಾಯಗಳು
ಮೂಡಿರುವುದರಿಂದ ಇನ್ನು ಮುಂದೆ ನಾವುಗಳು ಒಟ್ಟಾಗಿ
ಜೀವಿಸುವುದು ಅಸಾಧ್ಯವಾಗಿರುವುದರಿಂದ ನಾವುಗಳು ಪ್ರೀತಿ
ವಿಶ್ವಾಸದಿಂದ ಇರುವಾಗಲೇ ನಮ್ಮ ಗ್ರಾಮದ ಪಂಚರ ಸಮಕ್ಷಮ

ನಮ್ಮ ಕುಟುಂಬದ ಹಿತೈಷಿಗಳ ಸಮಕ್ಷಮ ಈ ಕೆಳಕಂಡಂತೆ

ಸೂತ್ರನ್ನು ನಾವುಗಳು ವಿಭಾಗ ಮಾಡಿಕೊಂಡಿರುತ್ತೇವೆ.”

19. This partition deed is executed only between the Defendant No.3 and 5. Though the relationship between the Plaintiff and the Defendants are not disputed, the daughters are not included in the partition deed for the reason best known to the Defendant No.3 and 5. The Defendant No.3 and 5 have not stated any reason as to why they have not included all the family members in the partition deed. In the written statement, they have taken contention that at the time of marriage of the daughters, they were given with sufficient money and gold and therefore the daughters are not entitled for any share. But they have not produced any documents to substantiate the same.

20. Ex.D2 is the MR extract, wherein it reflects the name of the Defendant No.3 and 5 with respect to the suit schedule properties. Further, Ex.D3 to Ex.D6 are the RTC extracts which reflects the name of the Defendant No.3 and

5 with respect to the suit schedule properties. Ex.D7 to Ex.D11 are the tax paid receipts, wherein the Defendant No.3 and 5 have paid tax with respect to the suit schedule properties. Ex.D12 to Ex.D17 are the hand written RTCs extracts with respect to Item No.4, wherein the RTC extract from the year 1964-1967 reflects the name of grand father i.e., Siddappa. Further, as per the Ex.D13 to Ex.D16 from the year 1969-1986 though the column No.9 reflects the name of the grand father Siddappa, column No.12 reflects the name of Eshawarappa i.e., the father of the Plaintiff and the Defendant No.2 to 7. Thereafter from Ex.D17 i.e., from the year 1989-90, the document reflects the name of Defendant No.3 i.e., Mruthyunjaya vide MR.No.8/88-89. Though the document reflects the name of the Defendant No.3, he has not deposed as to how he has acquired the said property from his grand father. No doubt he has stated, his grand-father has given the said property out of love and affection. But what is the mode of transfer of property from his grand father to himself is not explained by the Defendant

No.3 and no documents are produced to show the mode of transfer. Further, it is contention of the Defendants that, the khata of the properties stood in the name of Defendant No.3 and 5 jointly. But they have not stated as to how they have acquired the suit schedule properties. Whether, they have acquired the properties through their ancestors or whether the properties are the self acquired properties of the Defendant No.3 and 5, there is no explanation as to how they have acquired the properties.

21. During the cross-examination, the DW.1 has deposed that,

“ನನ್ನ ಅಜ್ಜನ ಹೆಸರು ಸಿದ್ಧಪ್ಪ, ಸಿದ್ಧಪ್ಪನಿಗೆ ನನ್ನ ತಂದೆ ಈಶ್ವರಪ್ಪ ಒಬ್ಬನೇ ಮಗ ಅಂದರೆ ಸರಿ. ನನ್ನ ಅಜ್ಜ ಸಿದ್ಧಪ್ಪನಿಂದ ದಾವಾ ಆಸ್ತಿಗಳು ನನ್ನ ತಂದೆಯಾದ ಈಶ್ವರಪ್ಪನಿಗೆ ಬಂದಿರುತ್ತವೆ ಅಂದರೆ ಸಾಕ್ಷಿಯು ನನ್ನ ಅಜ್ಜ ಸಿದ್ಧಪ್ಪ ಜೀವಂತ ಇದ್ದ ಸಮಯದಲ್ಲಿ ನನಗೆ ಮತ್ತು ನನ್ನ ಅಣ್ಣ 3 ನೇ ಪ್ರತಿವಾದಿ ಹೆಸರಿಗೆ ಮಾಡಿರುತ್ತಾರೆ ಎಂದು ಹೇಳುತ್ತಾರೆ. ನನ್ನ ಅಜ್ಜ ನಮಗೆ ಮಾಡಿಕೊಟ್ಟ ಪತ್ರ ಮನೆಯಲ್ಲಿ ಇರುತ್ತದೆ”.

22. The DW.1 has deposed that, during the lifetime of their grand-father, he has given properties to the Defendant No.3 and 5 and the document given by his grand-father is at home. If at all the Defendant No.3 and 5 had such a document, then there was no impediment for them to produce the same before the Court but they have not produced any document to show that, they have acquired the properties from their grand-father during his life time. Furthermore, if at all the properties were given to them during the lifetime of their grandfather, then what was the purpose of execution of the partition deed in the year 2021 between the Defendant No.3 and 5. This creates doubt on the contention of the Defendant No.3 and 5.

23. Further, it is very pertinent to note that, during cross-examination, the DW.1 has deposed that,

“ದಾವಾ ಶೆಡ್ಯೂಲ್ ಸ್ವತ್ತುಗಳು ವಾದಿ ಮತ್ತು
ಪ್ರತಿವಾದಿಗಳ ಪಿತ್ರಾರ್ಜಿತ ಸ್ವತ್ತುಗಳು ಎಂದರೆ ಸರಿ”.

24. He has categorically admitted that, the suit schedule properties are the ancestral properties of the Plaintiff and the Defendants. It is also stated that grandfather has given Item No.4 property to the Defendant No.3. But he has not explained before the Court as to what is the mode of transfer of property to the Defendant No.3. Since, the DW-1 has admitted that the suit properties were originally ancestral properties, it is the burden upon the Defendant No.3 and 5 to show that, how they have acquired the suit schedule properties. The Defendant No.3 and 5 have contended that they have partitioned the suit schedule properties between the Defendant No.3 and 5 as the katha stood in their names. But, the Defendants have not explained as to how they have acquired the suit schedule properties.

25. As per the admission of the DW.1, all the properties originally are ancestral and joint family properties, if at all the nature of properties are changed subsequently, then it is the burden on the Defendants to show how the nature of the property is changed. The Defendant No.3 and 5 have stated

that the khata stood in their names jointly but on what basis the khata stood in their names is not explained by the Defendants. Again with respect to Item No.4, merely asserting that the property was given to Defendant No.3 by his grand-father, without placing any documents, cannot be construed as the self acquired property of the Defendant No.3.

26. Furthermore, as per the Defendant No.3, the item No.4 was given to the Defendant No.3 by his grand-father and he has been in possession over the property from very long time and if at all the said property was given to the Defendant No.3, then why was the said property included in the Partition deed between the Defendant No.3 and 5 in the year 2021. The inclusion of Item No.4 property in the partition deed itself makes it clear that the said property is the joint family property of the Plaintiff and the Defendants.

27. Further, as per Ex.D12 RTC, the item No.4 property originally stood in the name of the grand-father of Plaintiff

and the Defendant No.2 to 7, subsequently the name of the father of the Plaintiff and the Defendant No.2 to 7 is reflected in RTC column No.12 as per Ex.P13 to 16. The Defendant No.3 has asserted that the said property was given to him by his grand-father, but he has not produced any piece of document to substantiate the said fact and also he has not offered any explanation as to on what mode the said property was given to him. Further, Item No.4 originally stood in the name of grand father. There are no documents to show that he has given the property to anyone vide any document and hence when he died intestate, his only son Eshwarappa inherits his property and therefore the said property becomes separate property/self acquired property of the said Eshwarappa. Since, the father of the Plaintiff and the Defendant No.2 to 7 has died intestate, it becomes joint family property of the Plaintiffs and the Defendants as per Section 8 of the Hindu Succession Act.

28. As discussed earlier, the Plaintiff has not produced any documents to show that the properties are the joint family properties of the Plaintiff and the Defendants. The Defendants also have failed to produce any documents as how they have acquired the suit schedule properties. But as discussed in the preceding paras, since the Defendant No.3 and 5 have failed to show as to on what basis they have acquired the properties, it could be inferred that the suit properties are the joint family properties of the Plaintiffs and the Defendants. Hence, Issue No.1 is answered in the **Affirmative.**

29. Issue No.2: It is the contention of the Plaintiff that, the Defendant No.3 and 5 have colluded and has got changed the katha of the suit schedule properties by fabricating the documents. The burden is upon the Plaintiff to show that the Defendant No.3 and 5 have fabricated the documents for the change of khata. But in order to prove the same, the Plaintiff has not produced any documents. Mere assertion that the Defendants have fabricated the documents, without any

supportive documents from the Plaintiff is not sufficient to accept the contention of the Plaintiff. Hence, Issue no.2 is answered in the **Negative**.

30. Issue No.3: It is the contention of the Defendant No.3 and 5 that, the grand-father by name Siddappa has given item No.4 property to the Defendant No.3 out of love and affection. No doubt they have taken the such contention, but there are no documents produced by the Defendant No.3 and 5 to show as to what is the mode of transfer from the Grand father to Defendant No.3. There has to be some document to transfer the title of the property from one person to another person. Though the DW.1 has deposed that, the said document is placed at home, he has not made any efforts to produce the same. Admittedly, the document in Ex.D17/RTC extract reflects the name of the Defendant No.3 from 1989-90. But the Defendant has not produced any document to show the mode of transfer and on what basis he has acquired the property. Moreover, the D.W-1 has deposed that all the suit properties are ancestral property of the

Plaintiff and the Defendants. The Defendant No.3 has taken contention that Item No.4 was given to him from his grandfather but he has failed to prove the same. Hence, Issue No.3 is answered in the **Negative**.

31. Issue No.4: The Defendant No.3 and 5 have taken contention that, the Defendant No.3 has perfected his title over the suit schedule item No.4 property. They have clearly taken the contention as to adverse possession, but in order to set up a plea of adverse possession, they have to accept the ownership/title of the opposite party. Moreover, in a suit for partition and possession between the family members, there is no concept of adverse possession. In the suit for partition, all the family members are presumed to be in joint possession and enjoyment over the suit properties. So, under this circumstances, the question of the adverse possession by the Defendant No.3 over the suit item No.4 property does not arise. Therefore, Issue No.4 is answered in the **Negative**.

32. Issue No.5: The Defendant No.3 and 5 have taken the contention that, the Plaintiff has not given appropriate description and identity of the properties. If the Plaintiff has given wrong boundaries, then burden is upon the Defendants to substantiate proper boundaries. But the Defendant has not asserted about the proper boundaries of the suit schedule properties and have not produced any piece of documents to show the correct boundaries of the suit properties or they have not even taken contention in the written statement as to the proper boundaries of the properties. Therefore, the Defendant No.3 and 5 have failed to prove the same. Hence, Issue No.5 is answered in the **Negative.**

33. Issue No.6: As discussion in the issue No.1, the Plaintiff has proved that, the properties are the joint family properties of the Plaintiff and the Defendants. So, under this circumstances, after the death of father Eshwarappa, the Plaintiff and the Defendants being the class – I legal heirs inherits the property. There are no documents to show that

he has disposed the suit properties during his lifetime. The said Eshwarappa has died intestate, when such being the case, as per Sec.8 of Hindu Succession Act, 1956. As per Section 8, if a male Hindu who dies intestate, his property will devolve, firstly upon the heirs, being the relatives specified in Class I of the schedule; Secondly, if there is no heir of Class I, then upon the heirs, being the relatives specified in Class II of the schedule; Thirdly, if there is no heir of any the two classes, then upon the agnates of the deceased; and lastly, if there is no agnate, then upon the cognates of the deceased.

34. Herein this case, the Plaintiff being the daughter, the Defendant No.1 being the wife of Eshwarappa and Defendant No.2 to 7 being the children of the late Eshwarappa becomes class-1 legal heirs and they are entitled for equal share in the suit schedule properties. Therefore, all the family members are entitled for equal share in the suit properties. Accordingly, the Plaintiff is

entitled for 1/8th share in the suit schedule properties.

Hence, Issue No.6 is answered in the **Affirmative.**

35. ISSUE No.7:- In view of the above findings on Issue No. 1 to 6, this Court proceeds to pass the following order.

O R D E R

The suit of the Plaintiff for the relief of Partition and Separate possession is hereby decreed.

The Plaintiff is entitled for 1/8th share in the suit schedule properties.

The Defendant No.1 being the wife of deceased Eshwarappa is entitled for 1/8th share in the suit schedule properties.

The Defendant No.2 to 7 being the children of deceased Eshwarappa are entitled for 1/8th share each in the suit schedule properties.

In view of the facts and circumstances of the case and relationship between the parties, no order as to cost.

Draw preliminary decree accordingly.

*In view of the directions issued by the Hon'ble Apex Court in a Judgment reported in **2022 SCC On-line SC 737 (Kattukandi Edathil Krishnan and another V/s Kattukandi Edathil Valsan and others)** and Circular No.DJA-1/1105 dated 21.10.2022 issued by Hon'ble High Court of Karnataka, when the preliminary decree is passed in a partition suit, the Court has to initiate final decree proceedings under Order 20 Rule 18 of CPC by suo moto.*

Hence, office is directed to register a Final Decree Proceedings under Order 20 Rule 18 of CPC based on preliminary decree after appeal period is over and keep a certified copy of preliminary

decree passed in this suit and other records in the FDP proceedings.

(Dictated to the Stenographer, typed by her directly through computer, corrected by me and then pronounced in the open Court on this the 25th day of July, 2026)

(Rashmi.S)

Prl. Civil Judge & JMFC.,
Shikaripura.

ANNEXURE

List of witnesses examined for the Plaintiff/s:

PW-1 : Channappa (GPA holder)

List of witnesses examined for the Defendant/s:

DW-1 : Manjappa

DW-2 : Veerappaiah

DW-3 : Chandrashekar Gowda

List of documents marked for the Plaintiff/s:

Ex.P1 : GPA executed by the Plaintiff

Ex.P2

to Ex.P5 : RTC extracts

Ex.P6 : Study Certificate of the Plaintiff

Ex.P7 : MR extract

List of documents marked for the Defendant/s:

- Nil -

**(Rashmi.S)
Prl. Civil Judge & JMFC.,
Shikaripura.**

(Order pronounced in the open Court vide
separate Judgment)

ORDER

*The suit of the Plaintiff for the relief of
Partition and Separate possession is hereby
decreed.*

*The Plaintiff is entitled for 1/8th
share in the suit schedule properties.*

*The Defendant No.1 being the wife of
deceased Eshwarappa is entitled for
1/8th share in the suit schedule
properties.*

*The Defendant No.2 to 7 being the
children of deceased Eshwarappa are
entitled for 1/8th share each in the suit
schedule properties.*

*In view of the facts and
circumstances of the case and
relationship between the parties, no order*

as to cost.

Draw preliminary decree accordingly.

*In view of the directions issued by the Hon'ble Apex Court in a Judgment reported in **2022 SCC On-line SC 737 (Kattukandi Edathil Krishnan and another V/s Kattukandi Edathil Valsan and others)** and Circular No.DJA-1/1105 dated 21.10.2022 issued by Hon'ble High Court of Karnataka, when the preliminary decree is passed in a partition suit, the Court has to initiate final decree proceedings under Order 20 Rule 18 of CPC by suo moto.*

Hence, office is directed to register a Final Decree Proceedings under Order 20 Rule 18 of CPC based on preliminary decree after appeal period is over and keep a certified copy of preliminary decree passed in this suit and other records in the FDP proceedings.

***Prl. Civil Judge & JMFC.,
Shikaripura.***