

**IN THE COURT OF THE I ADDL., CIVIL JUDGE & JMFC AT
SHIKARIPURA**

PRESENT: Sri. Dhananjay Hegde

B.com,LLB

I Addl. Civil Judge & JMFC, Shikaripura.

Dated this the 09th day of June-2026

O.S.No.20/2026

PLAINTIFF/S:-

1. Smt.Sakamma
W/o Parameshwappa,
Aged about 48 years.

2. Smt.Sahana K.P
W/o Preetham C
Aged about 26 years,
R/o #61/2, Hosakeri,
Honnali Taluk,
Davanagere District.

3. Kum Nayana.K.P
D/o Parameshwarappa,
Aged about 24 years.

4. Kum.Sharath.K.P
S/o Parameshwarappa,
Aged about 22 years.

Plaintiff no 1, 3 & 4 are
R/o Mayappara Keri,
Shikaripura Town and Taluk.

(By Shri.PJV., Advocate)

-Vs.-

DEFENDANT/S:

1. Sri.K. Haladappa
S/o Kenchappa,
Aged about 73 years,
R/O Mayappara Keri,
Shikaripura Town and Taluk.

2. Smt.Shanthamma
W/o Siriyanna S,
Aged about 68 years,
R/o Durgamma Temple
Near Hosakeri
Shikaripura Town and Taluk.

3. Smt. Nagamma
W/o K. Haladappa,
Aged about 67 years,
R/o Mayappara Keri
Shikaripura Town and Taluk.

4. Sri Palakshappa
S/o K. Haladappa,
Aged about 67 years,
R/o Baktha Kanakadasa Keri
Road, Kumbaragundi Keri,
Shikaripura Town and Taluk.

5. Sri.Shanamukappa
S/o K. Haladappa,
Aged about 39 years,
R/o Hosakeri,
Shikaripura Town and Taluku

6. Smt.Asha
W/o Shivamurthy
Hurakannramane,
Aged about 39 years,

R/o Ganjeenahalli village,
Honnali taluk, Davanagere Dist.

7. Sri. Ramesh
S/o K. Haladappa,
Aged about 36 years,
R/o Shanthi Nagara,
Shikaripura Town and Taluk.

(D1, 3 to 7 by Sri.SSN., Adv.)
(D2 by Sri.NSG., Adv.)

Parties to IA-III

PLAINTIFF/APPLICANTS:

Smt.Sakamma & others

-Vs.-

DEFENDANT/OPPONENTS:

Smt.Shanthamma

ORDERS ON I.A No.III

1. The plaintiffs have filed IA-III under Order XXXIX Rule 1 and Rule 2 of the CPC seeking an order of temporary injunction restraining defendant no. 2 from interfering with the said petition schedule property, i.e., Item No.4 of the suit schedule property.

2. In the affidavit accompanying the above application as well as in the Plaint, the plaintiffs have stated that they filed the present suits in the relief of Partition and separate possession of their share out of the half share to be allotted to defendant no. 1, i.e., Sri. K. Haladappa, in the suit schedule properties and sought the relief of a declaration that the registered partition deed bearing SR No. 8320/2024-25 is not binding on their share in the suit properties and the said deed is to be declared as null and void.

3. It is the case of the plaintiffs that one Sri Doddakenchappa is the propositus of the undivided joint family of the plaintiffs and defendants. The said Kanchappa and his wife, namely Smt. Basamma had two children, namely K. Haladappa, who is defendant no. 1, and one Smt. Shantamma, i.e., defendant no. 2. The said K. Haladappa, i.e., defendant no. 1, married one Smt. Kenchamma, and from the wedlock of defendant no. 1 and Kenchamma, one son, namely Parameshwarappa, was

born. The said Parameshwarappa is no more. The plaintiffs are the wife and children of Parameshwarappa.

4. The plaintiffs have described the genealogy that the defendant no. 1 was in a relationship with defendant no. 3 during the subsistence of the marital tie between himself and Smt. Kenchamma. From the relationship of defendant no. 1 and defendant no. 3, defendant no. 4 to 7 children were born. Defendant no. 3 and defendant no. 4 to 7 have no right over the suit schedule properties inasmuch as they are not the co-parceners.

5. Further, the plaintiffs have asserted that the suit-scheduled properties were allotted to the share of Doddakenchappa in the jubani hissa. Subsequently, after the death of the said Doddakenchappa, the suit schedule properties came to be entered in the name of defendant no. 1 alone. Among defendants no. 1 and 2, and among the other remaining defendants, there was no partition. Defendants Nos 1 and 3 are residing in Item No. 3 of the suit property, and the plaintiffs are residing in Item No. 4 of the suit property.

6. When the matter stood thus, defendants no. 1 and 2 got the Item No. 1 to 4 properties partitioned via a registered partition deed dated 05.03.2025 without including the plaintiffs or other members of the joint family to the said document. Since the plaintiffs are also the members of the joint family, defendant no. 1 and defendant no. 2, behind the back of the plaintiffs and colluding with each other, got such a partition deed executed only to defeat the rights of the plaintiffs over the suit properties. On the strength of the said partition deed, defendant no. 1 and defendant no. 2 got the khata of the suit properties changed into their names. Since the plaintiffs were not made parties to the said document, though they were members of the joint family, such a partition deed is not binding on the plaintiffs. In that view of the matter, the said partition deed is void ab initio and it has no validity in the eyes of the law.

7. It is the specific contention of the Plaintiffs that Defendant No.2 is trying to dispossess the Plaintiffs from the Item No.4 property by taking advantage of the khata

standing in her name. It is the apprehension of the Plaintiffs that Plaintiff No.1, who is a widow living with her children in Item No.4 of the suit schedule property. If Defendant No.2 dispossess the Plaintiffs from the said property, they will be thrown onto the street. Hence, the present application for restraining the defendant No.2 from interfering with Item No.4 of the suit property.

8. Upon service of summons, defendants number 1 to 7 entered appearance. Defendant no. 2 has filed a written statement and adopted the said written statement as objections to IA No. III.

9. In the written statement, Defendant No. 2 has admitted the relationship between the plaintiffs and the defendants as described in the plaint schedule. It is also admitted by defendant no. 2 that the suit schedule properties were initially allotted to the share of Doddakenchappa in the jubani hissa. Later, the same was entered in the name of defendant no. 1 after the death of Doddakenchappa.

10. Defendant no. 2 has categorically asserted that the Item No. 2 and 4 properties are standing in the name of Defendant No. 2 on the basis of the registered partition deed dated 05.03.2025. The said partition was effected between defendant no. 1 and defendant no. 2 by following the due process of law. Since the plaintiffs were not made parties to the said document, they have no right to question the legality of the said document. That apart, it is contended by defendant no. 2 that though the plaintiffs were having knowledge of the execution of the said partition deed, they have not raised their voice against it. However, only to deprive defendant no. 2 of enjoying the property allotted to her in the partition, they filed the present suit.

11. Defendant no. 2 has categorically contended that, in view of the partition dated 05.03.2025, there exists no joint family as contended by the plaintiffs in the plaint. Already, the status of the joint family has been severed, and Item Nos. 2 and 4 properties have been allotted to the share of the defendant no. 2. That being the case, the

plaintiffs are entitled to claim partition in the properties allotted to defendant no. 1. There exists a joint family status between the plaintiffs and defendants no. 1 and 3 to 7. Hence, the plaintiffs at most can claim partition in the properties allotted to defendant no. 1 in the partition, and not all the suit schedule properties.

12. Defendant no. 2 has asserted that the plaintiffs are not entitled to be made parties to the partition among defendants no. 1 and 2. Moreover, the plaintiffs have not assailed the legality of the partition deed, and they have not alleged any lack of genuineness in the execution of the said document. That being the case, the case set up by the plaintiffs itself is a fictitious one and the same deserves to be dismissed.

13. It is the categorical assertion of defendant no. 2 that, pursuant to the registered partition deed, the khata of the Item No. 2 and 4 properties have been changed into her name. And, it is further asserted by defendant no. 2 that she has been put in possession of the Item No. 2 and 4 properties. That being the case, there shall not be an

order of injunction restraining defendant no. 2 from enjoying her share i.e., Item No.4 of the suit schedule properties.

14. Upon the rival pleadings of the parties the points that arise for consideration of this Court:

POINTS

- 1. Whether Plaintiff has made out a prima-facie case?*
- 2. Whether irreparable injury and hardship would cause to the Plaintiff, if temporary injunction is not granted?*
- 3. Whether balance of convenience lies in favour of Plaintiff?*
- 4. What Order?*

15. The plaintiffs, in support of their assertion, filed as many as 15 documents including RTCs, mutation register extracts, a sale deed, Form No. 3, the registered partition deed, and a genealogical tree, as well as a photocopy of the identity card, ration card and photographs.

16. Heard the learned counsel appearing for the plaintiffs and defendant no. 2 on IA No. 2.

17. The findings of this court to the above Points are as follows:

POINT NO.1 : *In the Negative*

POINT NO.2 : *In the Negative*

POINT NO.3 : *In the Negative*

POINT NO.4 : *As per order for the following: -*

REASONS

18. **POINT NO.1** : - The plaintiffs have filed the present suit seeking the relief of partition of their share in the half share to be allotted to defendant no. 1 in the suit schedule properties. Further, it is also sought by the plaintiffs that the registered partition deed dated 05.03.2025 executed between defendants no. 1 and 2 with respect to the Item No. 1 to 4 properties is not binding on their share in the suit properties.

19. It is apparent that the relationship described by the plaintiffs in the plaint is not disputed by defendant no. 2. Therefore, it can be inferred that defendant no. 1 and

defendant no. 2 are the children of Sri Doddakenchappa. It is also not disputed by the defendants that the suit properties were originally allotted to Doddakenchappa in the jubani hissa. Subsequently, after his death, all the Item No. 1 to 4 properties were entered only in the name of defendant no. 1. That being the case, it is forthcoming that the suit schedule properties are prima facie the ancestral properties to the children of defendant no. 1 through his legally wedded wife.

20. The plaintiffs have asserted that defendant no. 1 married one Smt. Kenchamma and from the wedlock of defendant no. 1 and Kenchamma, one Parameswarappa was born. Plaintiff no. 1 is the wife of the said Parameshwarappa and plaintiffs no. 2 to 4 are the children born to plaintiff no. 1 and the said Parameshwarappa. Therefore, the said Parameshwarappa, who is the son of defendant no. 1 and Kenchamma, is entitled to claim partition in the suit schedule properties.

21. The plaintiffs have produced the photocopy of the ration card and Adhar card, as well as the photocopy of

the genealogical tree pertaining to the plaintiffs' family, as well as the genealogical tree pertaining to the Defendant No.1 and 2. From the perusal of the said documents, it is forthcoming that the relationship as stated by the plaintiffs is prima facie corroborated, and the said relationship is acknowledged in the ration card, as well as the genealogical tree issued by the competent authority.

22. The plaintiffs have sought to void the registered partition deed dated 05.03.2025 entered into between defendant no. 1 and defendant no. 2, claiming that they ought to have been made parties to the document. However, the said partition was effected without including the plaintiffs herein as parties to the said partition. Therefore, the said partition is void and not binding on the plaintiffs' share. On the other hand, it is the contention of defendant no. 2 that the plaintiffs are not necessary parties to the partition between defendants no. 1 and 2, who are the children of the original propositus, i.e., Doddakenchappa. The plaintiffs are entitled only to claim partition in the share allotted to defendant no. 1 in the

partition, and they cannot assail the legality of the partition entered into between defendant no. 1 and defendant no. 2.

23. From the perusal of the genealogical tree described by the plaintiffs in the plaint, it is forthcoming that the propositus of the joint family is Doddakenchappa. The said Doddakenchappa had two children, namely K. Haladappa, that is defendant no. 1, and Smt. Shantamma, that is defendant no. 2. It is stated by the plaintiffs in the plaint itself that there was no partition between defendant no. 1 and defendant no. 2. However, the suit properties were entered only in the name of defendant no. 1 after the death of the father. Therefore, it is evident that the Item No. 1 to 4 properties were not partitioned between defendant no. 1 and defendant no. 2, who are the children of Doddakenchappa.

24. It is to be noted that the Item No. 1 to 4 properties came to be partitioned between defendant no. 1 and defendant no. 2 via a registered partition deed dated 05.03.2025. The plaintiffs have produced the photocopy of

the registered partition deed dated 05.03.2025. From the perusal of the said registered partition deed, it is forthcoming that defendant no. 1 and defendant no. 2 got Item No. 1 to 4 of the suit schedule properties partitioned. Wherein, the Item No. 1 and 3 properties were allotted to the share of defendant no. 1, and Item No. 2 and 4 properties were allotted to the share of defendant no. 2.

25. The plaintiffs have also produced the Mutation Register Extract, i.e., MR No. 15/2024-2025, which reveals that the khata of Item No. 1 of the suit property came to be changed in the name of defendant no. 1, pursuant to the said registered partition deed. The RTC pertaining to the Item No. 1 property also reflects the name of defendant no. 1 in column no. 9 as well as in column no. 12. Likewise, the MR No. 41/2024 -2025 produced by the plaintiffs shows that, pursuant to the registered partition deed, the khata of Item No. 2 of the suit property came to be changed in the name of defendant no. 2. It is also forthcoming from the perusal of the RTC pertaining to the Item No. 2 property for the years

2024-25 that, before the execution of the partition deed, the said property was standing in the name of defendant no. 1.

26. The Form No. 3 produced by the plaintiffs pertaining to the Item No. 3 and 4 properties shows that, pursuant to the said registered partition deed, the khata of the Item No. 3 property is standing in the name of defendant no. 1, and the title of the Item No. 4 property came to be changed in the name of defendant no. 2. The perusal of the aforesaid documents shows that, in the partition deed dated 05.03.2025, defendant no. 1 and 2 were made parties, but not the plaintiffs. That apart, the said registered partition deed has been acted upon, and the khata of the Item No. 1 to 4 properties came to be changed in the names of defendants no. 1 and 2 respectively, as per the properties allotted to their shares in the said partition. Hence, it is abundantly clear that the said partition deed has been acted upon.

27. The plaintiffs have claimed their right over the suit property through the branch of defendant no. 1. It is to be

noted that the deceased Doddakenchappa admittedly had two children, i.e., defendants no. 1 and 2. Therefore, there are two branches in the family of Doddakenchappa—one through defendant no. 1 and another through defendant no. 2. The plaintiffs, who are claiming to be the wife and children of one Parameshwarappa, who is the son of Haladappa, come under the branch of defendant no. 1. When a partition takes place among the heads of two different branches, the heirs claiming under such a branch inherently not entitled question the partition between the heads of the two branches. It is a settled position of law that, when a partition takes place between a father and an uncle, the son is not a necessary party to the said partition. The son is entitled to claim partition in the properties which are allotted to his father in the partition between the father and the uncle.

28. In the case at hand, the plaintiffs, who are the wife and children of the son of defendant no. 1, are *prima facie* entitled only to claim partition in the properties allotted to defendant no. 1 in the partition between defendant no. 1

and defendant no. 2. For the partition between defendant no. 1 and defendant no. 2, the plaintiffs are not necessary parties. It is not a sine qua non to implead the plaintiffs to the partition between defendant no. 1 and defendant no. 2, inasmuch as they are the legal heirs of defendant no. 1 who are claiming shares among the properties allotted to defendant no. 1's branch.

29. It is also forthcoming that the plaintiffs have not alleged any fraud, undue influence, or misrepresentation in the execution of the partition deed. Moreover, there is no contention regarding an unequal partition among defendants no. 1 and 2. The only contention is that they ought to have been made parties to the partition deed; however, they were not made parties. As observed above, the plaintiffs are not necessary parties to the partition deed between defendants no. 1 and 2, inasmuch as they are the branch heads of two different branches. The plaintiffs are entitled only to claim partition in the properties allotted to defendant no. 1's branch. The plaintiffs, instead of claiming partition of their share and

separation thereof in the properties allotted to defendant no. 1 in the partition, sought to assail the legality of the partition entered into between defendant no. 1 and defendant no. 2.

30. At this stage of the matter, prima facie it appears that the plaintiffs are not entitled to question the partition entered into between defendants no. 1 and 2. It is for defendant no. 1 to contend otherwise relating to the partition between himself and defendant no. 2, and it is not for the plaintiffs to dispute the partition. At this stage of the matter, it cannot be held that the plaintiffs are entitled to assail the partition deed entered into between defendant no. 1 and defendant no. 2 without there being any allegation of fraud, undue influence, misrepresentation, or mistake of facts. Since the plaintiffs are not necessary parties to the partition between defendants no. 1 and 2, this Court is of the view that the plaintiffs have not made out a prima facie case. ***Accordingly, Point No.1 is answered in the Negative.***

31. **POINT NO.2 AND 3:** - *These points are taken together for common discussion in order to avoid the repetition of facts and discussion.*

32. The plaintiffs have contended that they are in possession of Item No. 4 of the properties. Likewise, defendants Nos 1 and 3 are in possession of Item No. 3 of the suit schedule property. If the defendant No.2 is allowed to act upon the partition deed, then the same will deprive the plaintiffs of their entitlement to possess the Item No. 4 property, and the same would result in throwing the plaintiffs onto the road unlawfully.

33. It is to be noted that the plaintiffs have not furnished any document to draw an inference regarding their possession of the Item No. 4 property. The photographs produced by the Plaintiffs cannot be considered as the prima facie proof of their possession of Item No.4 property. Moreover, the plaintiffs have sought the relief of partition of their share in the half share to be allotted to defendant no. 1. Therefore, it is an admitted fact that defendant no. 2 is entitled to a $\frac{1}{2}$ share in Item No. 4 of the suit

schedule properties, even though the partition deed is discarded.

34. The plaintiffs are only entitled to claim their share in the half share to be allotted to defendant no. 1. Therefore, it is an admitted fact that the Plaintiffs are not entitled to claim the entire Item No.4 of the suit schedule property. If at all the suit is decreed, then also the Defendant No.2's $\frac{1}{2}$ share in Item No.2 of the suit property cannot be brushed aside. If the Defendant No.2, who is entitled to a $\frac{1}{2}$ share in the Item No.4 property even in the absence of the partition deed, shall not be restrained from enjoying her $\frac{1}{2}$ share in the Item No.4 of the property, which is entitled to be enjoyed even in the absence of the impugned partition deed. Moreover, it is apparent that in any stretch of the imagination, the Plaintiffs are not entitled to enjoy the whole Item No.4 property. That being the case, defendant no. 2, who admittedly has a $\frac{1}{2}$ share in the item no.4 property even in the absence of the existing partition deed, cannot be restrained from enjoying her entitlement in the

suit item no.4 of the property. ***Accordingly, points 2 and 3 are answered in the negative.***

35. **POINT NO.4:** - In view of the aforesaid discussion, this Court proceeds to pass the following;

O R D E R

The IA No. III filed by the plaintiffs under Order XXXIX Rule 1 and 2 is dismissed.

(Dictated to the Stenographer transcribed by her, Order corrected and signed by me, then pronounced by me in the Open Court on this the 9th day of June -2026)

I Addl. Civil Judge, JMFC.,
Shikaripura.