



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

Dated this the 10th day of June, 2026

:Present: Sri.B.N.Ramesh Babu, B.A.,LL.M.
Senior Civil Judge and JMFC,
Shikaripura

R.A.No.08/2024

PLAINTIFF/S : **Smt.Mallamma W/o**
Bharmappa M., dead by her
Lrs already on record:

The plaintiff No.2 and
defendant No.1 to 4 are all
R/o Nelgavagilu Village,
Shikaripura Taluk,
Shivamogga District.

2. Sri.Hulugappa M. S/o
Bharmappa, Aged about 68
years, Agriculturist, R/o
Nelavagilu Village,
Shikaripura Taluk,
Shivamogga district.

(By Sri.H.P.J., Advocate)

V/S

DEFENDANT/S: **1. Smt.Basamma @ Usha**
dead by her Lrs.

1(a). Smt.Chaitra M. D/o
Chudamaniyappa, Aged
about 31 years,

1(b) Smt.Shwetha M. D/o
Chudamaniyappa, Aged
about 29 years,

(The respondent 1(a) and (b)
are R/o Kappanahalli Village,
Shikaripura Taluk,
Shivamogga District)

2. Sri.Malleshappa M. S/o
Dharmappa M., Aged about
62 years.

3. Sri.Hanumanthappa S/o
Bharmappa M., Aged about
58 years, Agriculturist.

4. Sri.Basappa M. S/o
Bharmappa M., Aged about
55 years.

(The respondent No.2 to 4 are
R/o Nelavagilu Village,
Shikaripura Taluk,
Shivamogga District.

5. Sri.Rameshwarappa S/o
Ramappa, Aged about 80
years, Agriculturist, R/o
Vidyanagara Badavane,
Shikaripura Taluk,
Shivamogga district.

**(The respondent No.1 dead,
Sri.M.S.K. advocate for the
respondent No.2 to 4 and
Sri M.S.G. advocate for the
respondent No.5)**

Date and nature of the decree or order appealed against	Against the Judgment and decree passed by the learned II Additional Civil Judge & JMFC Court, Shikaripura in O.S.No.159/2017 dated 31.10.2023.		
Date of institution of appeal	23.01.2024		
Date on which Judgment pronounced.	10.06.2026		
Duration of the appeal	<u>Year/s</u> 02	<u>Month/s</u> 04	<u>Day/s</u> 15

(B.N.RAMESH BABU)
Senior Civil Judge & JMFC.
SHIKARIPUR

J U D G M E N T

The Appellant/plaintiff has filed this appeal being aggrieved by the Judgment and decree passed by the II Additional Civil Judge and JMFC, Shikaripura, in O.S.No.159/2017 dated:31.10.2023 dismissing the suit filed for partition and separate possession.

2. The appellants were the plaintiffs and respondents were the defendants before the Trial Court.

For the sake of convenience, the parties are referred to in this appeal/judgment as per their ranks before the Trial Court.

3. The brief facts of the plaintiff's case as under:

It is the case of the plaintiffs before the Trail Court that, the plaintiff No.2 is the son of the deceased plaintiff No.1 and the defendants are the children of the plaintiff No.1. The suit schedule property is the joint family property. The said property was fallen to the share of the father of the plaintiff No.2 in the partition between his father by name Sri.Bharamappa M and his brothers as per registered partition deed and the suit schedule property has been mutated in the name of Sri Bharamappa. After the death of Sri Bharamappa M, the plaintiffs and defendants have become the joint owners of the suit schedule property. Thereafter the defendants No.2 to 4 by colluding with revenue officials got mutated

their names to the suit property without the knowledge of the plaintiff. The plaintiff No.2 taking care of his mother i.e., the plaintiff No.1 and the defendants have not taken care of their mother. The plaintiff No.2 has demanded his share in the schedule property, but the defendants postponing the same. Further the plaintiffs stated that, Sy.No.1401/1 measuring 2 acres 22 guntas and also one house situated at Beguru village are standing in the name of the plaintiff No.2 and the said properties are self acquired properties of the plaintiff No.2 and the defendants have no right over the same. The plaintiff No.2 has sold the property i.e., Sy.No.40/2 an extent of 1-00 to the defendant No.5 on 20.08.2015 for his financial difficulties. Hence, the defendants have no right over the same. Hence, the plaintiffs have filed this suit for partition in the schedule properties.

4. After service of summons, the defendant No.1 to 4 have appeared through their counsel before the trial court and filed their written statement and admitted the

relationship and denied entire plaint averments and further contended that, the suit schedule property has fallen to the share of the father of the defendants and plaintiff No.2 as per partition deed. The husband of the plaintiff No.1 and father of the plaintiff No.2 and the defendant No.1 to 4 died on 07.08.1981 and all the members are having right over the suit property and also denied that, defendant No.2 to 4 by colluding with the revenue officials have mutated their names. The plaintiff No.1 is the mentally ill women who cannot maintain herself and she does not know the facts of the case. The plaintiff No.2 suppressed the material facts and arrayed the plaintiff No.1 without the permission of the court for appointment of guardian. It is also necessary to appoint the guardian U/Section 52 of the Mental Health Act to represent the plaintiff No.1. Hence, the suit is not maintainable. The defendants have taken care of plaintiff No.1, thereafter the plaintiff No.2 took the plaintiff No.1 from the house of the defendants before

filing the suit. The said property is joint family property and the defendants and plaintiffs are joint family members and they have not only having suit schedule property, but also having other immovable properties. The defendants further contended that, there is a Jubani Hissa taken place between the plaintiffs and the defendants on 23-12-1996, according to the said partition all are in possession of their shares allotted to them and residing separately. In the said partition Site bearing Khata No.130 situated at Nelavagilu Village, Shikaripura Taluk measuring 20X207 out of which 20X60 a Mangaluru Tiled house is allotted the plaintiff No.1. The land bearing Sy.No.40/1A measuring 1 guntas and land Sy.No.40/2A measuring 1 acre situated at Goddanakoppa Village, Hosur Hobli, Shikaripura Taluk and land bearing Sy.No.1401/2 measuring 2 acres 22 guntas situated at Begur Village, Hosur Hobli, Shikaripura Taluk are allotted to the share of the plaintiff No.2. The land bearing Sy.No.40/1A measuring

21 guntas, the land bearing Sy.No.40/1B measuring 20 guntas situated at Goddanakoppa Village, Hosur Hobli, Shikaripura Taluk, the land bearing Sy.No.1401/2 measuring 2 acres 22 guntas are allotted to the share of the defendant No.2. The land bearing Sy.No.40/1A measuring 1 acre one Gunta situated at Goddanakoppa Village, Hosur Hobli, Shikaripura Taluk, the land bearing Sy.No.1401/2 measuring 2 acres 22 guntas situated at Begur Village, Hosur Hobli, Shikaripura Taluk, is allotted to the share of the defendant No.3. The land bearing Sy.No.40/1A measuring 1 acre one Gunta situated at Goddanakoppa Village, Hosur Hobli, Shikaripura Taluk, the land bearing Sy.No.1401/2 measuring 2 acres 22 guntas situated at Begur Village, Hosur Hobli, Shikaripura Taluk, is allotted to the share of the defendant No.4. The defendant No.4 is residing in the house bearing Khata No.130 which is standing in the name of the plaintiff No.2. As per Jubani Hissa, the Kathas have been changed, but the plaintiff No.2

suppressed the same. The plaintiff No.2 has sold his share to one Sri.Rameshwarappa S/o Ramappa, hence the purchaser is necessary party to the suit. The plaintiffs and defendant No.2 to 4 are performed the marriage of the defendant No.1 and at the time of marriage they gave dowry, gold ornaments and marriage expenses of Rs.50,000/-. Hence, the defendant No.1 has not having any share in the suit schedule property. Further contended that, the plaintiff No.2 has sold his share bearing Sy.No.40/2A an extent of 1 acre land to one Rameshwarappa on 20-08-2015 and he requested the defendants to put their signature on the sale deed, because Jubanihissa i.e., unregistered partition. Hence, the purchaser also demanded to put their signatures on the sale deed. Due to inevitable circumstances the defendant No.2 to 4 also put their signatures in the sale deed. Even though the partition took place between the plaintiffs and defendants, but the defendant with an intention to grab the valuable property of the defendant

No.2 to 4 has filed this false suit. Hence, prays to dismiss the suit.

5. The defendant No.5 being the purchaser of the suit schedule property has appeared through his counsel and separately filed his written statement and denied the contention of the plaintiff and contented that, he is the bonafide purchaser of the partitioned property and the Jubanihissa has taken place on 23.12.1996 and the plaintiff No.2 has got mutated his name and sold 1 acre of land in Sy.No.40/3 to him on 20.08.2015. Further it is contended that, the plaintiff No.2 sustained loss in the year 2014 in growing the ginger and due to decease he sustained loss, hence he sold the said land to him for payment of loan. The jubani hissa was not registered. Thus, the plaintiff No.2 has taken signatures from defendant No.2 to 4. The name of the defendant No.5 is mutated who is bonafide purchaser and he is in possession of said land. Hence, prays to dismiss the suit.

6. On the basis of above pleadings of both parties the Trial Court has framed the following issues:

ISSUES

1. Whether the plaintiff proves that he is entitle for share over suit schedule property?

2. Whether the defendant No.1 to 4 prove that there is already partition of suit schedule property as claimed in written statement?

3. Whether the plaintiff is entitled for share over suit property? If so, to what extent?

4. What order or decree?

7. In order prove his case before the trial court the plaintiff got himself examined as PW.1 and produced documents as per Ex.P.1 to 4 and closed his side evidence. On the other hand the defendant No.3 has got examined as DW.1 and examined two witnesses as DW.2 and 3 and produced Ex.D.1 to 6 through PW.1 during his cross-examination by way of confrontation. The defendants have also

produced certain documents which are marked as Ex.D.7 to 36 and closed their side evidence.

8. By considering the evidence on record and after hearing the arguments on both sides, the Trial Court has dismissed the suit filed by the plaintiff on 31.10.2023.

9. Being aggrieved by the said judgment and decree passed by the II Addl Civil Judge and JMFC, Shikaripura, in O.S.No.159/2017, the plaintiff has filed this appeal U/o 41 Rule R/W/Sec.96 of C.P.C., by setting out the following:

GROUND

1. The Trial Court has wrongly held that, the plaintiff has failed to prove that, the suit schedule property is the joint family property of the plaintiffs and the defendants.

2. Though there was no partition in between the plaintiffs and the defendants, the Trial Court wrongly come to the conclusion that, there was a partition between the plaintiff and the defendants.

3. Though the suit schedule property is the ancestral and joint family property of the plaintiffs and the defendants, the Trial Court has wrongly come to the conclusion and dismissed the suit of the plaintiff.

4. The Trial Court has not appreciated the documents produced by the plaintiff and dismissed the suit of the plaintiff.

5. The Trial court without considering the oral and documentary evidence on record has wrongly come to the conclusion that already there was partition in between plaintiffs and defendants and dismissed the suit. Hence, it is liable to be set-aside.

10. On the above said grounds, the plaintiff/Appellant has preferred this appeal before this Court and prays to allow the appeal.

11. After service of notice the respondents/defendants appeared before this Court through their counsels and the respondent No.2 to 5 have supported the impugned judgment and decree passed by the trial court.

12. The entire Trial Court record in O.S.No.159/2017 has been secured from the Trial Court.

13. Along with appeal, the appellant has also filed I.A.I under Section 5 of Limitation Act to condone the delay, which was allowed by this court on 07.11.2024 by imposing costs of Rs.200/-.

14. Perused the records and also perused the written arguments of the respondent No.2 to 5 and heard the arguments of the learned counsel for the appellant.

15. On the basis of above, the points that arise for my consideration is that;

POINTS

1. Whether the appellant/plaintiff proves that the Trial Court has not considered the oral and documentary evidence produced by the appellants before the Trial Court and has wrongly come to the conclusion that the plaintiff has not proved the case?

2. Whether the impugned judgment of the Trial Court is against the law, facts, evidence and probabilities of the case and liable to be interfere by this court?

3. What order?

16. My findings to the above points are as under:

Point No.1: In the Negative

Point No.2: In the Negative

Point No.3: As per the final order
for the following:

REASONS

17. POINT NO.1: It is the case of the plaintiffs before the Trial Court that, the plaintiff No.2 is the son of the deceased plaintiff No.1 and the defendants are the children of the plaintiff No.1. The suit schedule property is the joint family property of the plaintiffs and defendants and the same was fallen to the share of father of plaintiff No.2 in the partition taken place in between his father by name Sri Bharamappa M and his brothers. Later the katha of the said property is also mutated his name and he was in possession and enjoyment of the said property during his life time. After the death of Sri Bharamappa M, the plaintiffs and defendants have become the joint owners of the suit schedule property.

But the defendants No.2 to 4 by colluding with revenue officials got mutated their names to the suit property without the knowledge of the plaintiff No.2. The plaintiff No.2 taking care of his mother i.e., the plaintiff No.1 and the defendants have not taken care of their mother. The plaintiff No.2 demanded has demanded his share in the schedule property, but the defendants are postponed the same. Hence, the plaintiffs have filed this suit and prays to decree the suit.

18. On the other hand, the defendant No.2 to 4 contended that already there was Jubani Hissa between plaintiffs and defendants on 23.12.1996 and according the partition all are in possession and enjoyment of their respective shares. The plaintiff No.1 is the mentally ill women who cannot maintain herself and she does not know the facts of the case. The plaintiff No.2 suppressed the material facts and arrayed the plaintiff No.1 without the permission of

the court for appointment of guardian. Hence suit is not maintainable. The defendants have taken care of plaintiff No.1, thereafter the plaintiff No.2 took the plaintiff No.1 from the house of the defendants before filing the suit. After the partition already the plaintiff No.2 has sold his share to one Sri Rameshwarappa S/o Ramappa, hence the purchaser is also necessary party to the suit. The plaintiffs and defendant No.2 to 4 are performed the marriage of the defendant No.1 and at the time of marriage they gave dowry, gold ornaments and marriage expenses of Rs.50,000/- to the defendant No.1. Hence, the defendant No.1 has not having any share in the suit schedule property. Hence, prays to dismiss the suit.

19. The defendant No.5 being the purchaser of the property bearing Sy.No.40/3 an extent of 1-00 acre from the plaintiff No.2 has also contended that, he is the bonafide purchaser of the said property and there was already Jubani Hissa taken place in

between plaintiffs and defendants on 23.12.1996 and the plaintiff No.2 has got mutated his name and sold 1 acre of land in Sy.No.40/3 to him on 20.08.2015 as he was sustained loss in the year 2014 in growing the ginger. The Jubani Hissa was not registered. Thus, the plaintiff No.2 has taken signatures from defendant No.2 to 4. The name of the defendant No.5 is mutated with respect his purchased property and hence he is a bonafide purchaser and is in possession of the said land. Hence prays to dismiss the suit.

20. To prove their contention the plaintiff No.2 got examined himself as PW.1 before the trial court and produced documents as per Ex.P.1 to P.4. To prove their contention the PW.1 has produced Ex.P.1 RTC Extract with respect to the property bearing Sy.No.40/1A for the year 2017-18. On perusal of the said document, it shows that, the already the suit schedule property was standing in the name of the plaintiffs and the defendant No.2 to 4 separately. The

PW.1 has also produced RTC Extract for the year 1976-77 with respect to the property bearing Sy.No.40/1A measuring 2 acres 24 guntas, to show that, the said property was standing in the name of Sri Bharmappa who is the father of the plaintiff No.2 and the defendant No.1 to 4. The PW.1 has also produced Ex.P.3 Mutation Register Extract which shows that, the suit schedule property has fallen to the share of Sri Bharmappa in the partition. The PW.1 has also produced Ex.P.4 Mutation Register Extract in MR. No.T86/2015-16 to show that, the Sy.No.40/1A was combined all survey numbers and thereafter, its total extent became 5 acres 8 guntas.

21. On the other hand, the defendants have produced Ex.D.1 to 6 through PW.1 during his cross-examination by way of confrontation. The defendants have also produced Ex.D.7 to 36. The Ex.D.1 to 3 are the Photographs to show that, in the house bearing house No.130 the defendant No.4 and his family has

been residing. The Ex.D.4 is the RTC extract for the year 1996-97 to show that, the property bearing Sy.No.40/1B was standing in the name of Smt. Mallamma W/o Bharmappa i.e., the plaintiff No.1. The Ex.D.5 is the Copy of Sale Deed dated:20.08.2015 to show that, the plaintiff No.2 has sold the property bearing Sy.No.40/3 in favour of the defendant No.5. The Ex.D.6 is the RTC Extract for the year 2018-19 in respect of property bearing Sy.No.40/3 to show that, after purchase of the said property, the Khata was changed in the name of defendant No.5. The Ex.D.7 is the Record of Rights in respect of property bearing Sy.No.40/1A. The Ex.D.8 is the RTC Extract for the year 1989-90. On perusal of the said document, it reveals that the said property was standing in the name of Smt.Mallamma W/o Bharamappa. The Ex.D.9 is the RTC Extract for the year 1976-77 in respect of property bearing Sy.No.40/1A. On perusal of the said document it seen

that, in column No.9, the name of Sri Bharamappa S/o Basappa is entered as Khatedar of the property. The Ex.D.10 is the RTC Extract for the year 1992-93 in respect of property bearing Sy.No.40/1B. On perusal of the said document it is seen that, the said property was changed in the name of Smt. Mallamma W/o Bharmappa. The Ex.D.11 is the RTC Extract for the year 2022-23 in respect of property bearing Sy.No.40/1A. On perusal of the said document it seen that, in column No.9, the name of Sri Malleshappa S/o Bharmappa is entered as Khatedar of the property. The Ex.D.12 is the RTC Extract for the year 2022-23 in respect of property bearing Sy.No.1401/1. On perusal of the said document it seen that, in column No.9, the name of Sri Hulugappa S/o Bharmappa who is the plaintiff No.2 in the present case, is entered as Khatedar of the property. The Ex.D.13 is the RTC Extract for the year 2022-23 in respect of property bearing Sy.No.40/5. On perusal of

the said document it seen that, in column No.9, the name of Sri Hanumanthappa S/o Bharmappa who is the defendant No.3 in the present case, is entered as Khatedar of the property. The Ex.D.14 is the RTC Extract for the year 2022-23 in respect of property bearing Sy.No.40/6. On perusal of the said document it seen that, in column No.9, the name of Sri Basappa S/o Bharmappa who is the defendant No.4 in the present suit, is entered as Khatedar of the property. The Ex.D.15 is the RTC Extract for the year 2001-02 in respect of property bearing Sy.No.40/1BP. On perusal of the said document it seen that, in column No.9, the name of Smt. Mallamma W/o Bharmappa who is the plaintiff No.1 in the present suit, is entered as Khatedar of the property. The Ex.D.16 is the RTC Extract for the year 2022-23 in respect of property bearing Sy.No.40/7. On perusal of the said document it seen that, in column No.9, the name of Sri Malleshappa S/o Bharmappa is entered as Khatedar

of the property. The Ex.D.17 is the RTC Extract for the year 2020-21 in respect of property bearing Sy.No.1401/1. On perusal of the said document it seen that, in column No.9, the name of Sri Hulugappa S/o Bharmappa is entered as Khatedar of the property. The defendant has also produced Ex.D.18 RTC extract in respect of property bearing Sy.No.1401. The defendants have also produced Ex.D.19 Mutation Register. The defendants have also produced Ex.D.20 Mutation Register in MR. No.T61/2014-15 pertaining to the property bearing Sy.No.40/1B. The defendants have also produced Ex.D.21 Mutation Register in MR. No.T93/2019-20 pertaining to the property bearing Sy.No.40/1A. On perusal of the said document it shows that the Sy.No.40/1A has divided as Sy.No.40/1A, Sy.No.40/4, Sy.No.40/5 and Sy.No.40/6 and the same are standing in the name of plaintiff No.2 and defendant No.2 to 4. The defendants have also

produced Ex.D.22 to 30 Tax Paid Receipts. On perusal of the said documents, it reveals that, Sri Basappa S/o Bharappa paid tax to the concern authority in respect of Sy.No.40/2, 40/1AP2, 40/A, 402A, 40/1A. The defendants have also produced Ex.D.31 Certified Copy of plaint, written statement in OS.No.194/2020 on the file of Civil Judge and JMFC., Shikaripura. On perusal of the said document, it reveals that, Sri M. Hulugppa who is the plaintiff in the present case, had filed a suit in respect of property bearing Sy.No.1401/1 measuring 2 acres 22 guntans situated at Beguru Village, Shikaripura Taluk, Hosuru Hobli, against the defendant No.2 to 4 seeking the relief of permanent injunction. The Ex.P.33 is the RTC Extract for the year 2023-24 in respect of property bearing Sy.No.40/3. On perusal of the said document it seen that, in column No.9, the name of Sri S.R.Rajesh S/o T. Rameshwarappa is entered as Khatedar of the property. The defendants

have also produced Mutation Register in MR. No.H31/2018-19 in respect of property bearing Sy.No.40/3 which shows the said property has changed in the name of SriS.R. Rajesh S/o T. Rameshwarappa. The defendants have also produced Ex.D.35 Certified Copy of Registered Sale Deed dated:20.08.2015 to show that, the plaintiff No.2 has sold the property bearing Sy.No.40/3 in favour of the defendant No.5. The defendants also produced Ex.D-36 encumbrance certificate.

22. In this case, it is the specific case of the plaintiffs that, the suit schedule property is the joint family property of the plaintiffs and the defendant No.1 to 4 and same was acquired by the father of the plaintiff No.2 and the defendant No.1 to 4 through a registered partition taken place in between himself and his brothers and later the Khata of the said property was also changed in his name as per MR. No.24/1958-59 and, thereafter, he was in peaceful

possession and enjoyment of the same during his life time. He died on 07.08.1981. Thereafter, the plaintiffs and the defendant No.1 to 4 are in peaceful possession and enjoyment of the same. But after the death of their father the defendant No.2 to 4 without giving share to the plaintiffs have got changed the Khata in their favour. Hence, prays to decree the suit.

23. On the other hand, the defendant No.2 to 4 have contended that, already there was a Jubani Hissa in between the plaintiffs and the defendant No.2 to 4 in the year 1996. Thereafter, the plaintiff No.2 sold his share of 1 acre in favour of the defendant No.5 in Sy.No.40/3. Hence, there was already partition took place between the plaintiffs and the defendant No.2 to 4. But at the request of the plaintiff No.2, they have also put their signatures to the sale deed executed in favour of defendant No.5. Hence, prays to dismissed the suit.

24. The defendant No.5 has also filed his written statement and contended that, there was a Jubani Hissa in between the plaintiffs and the defendant No.2 to 4 in the year 1996. In the said partition, the property bearing Sy.No.40/3 measuring 1 acre was allotted to the share of the plaintiff No.2 and same was sold by the plaintiff No.2 in his favour. Hence, prays to dismiss the suit.

25. In this case, though the plaintiff No.2 has contended that, there was no partition in between the plaintiffs and the defendant No.1 to 4 with respect to schedule property and the defendant No.2 to 4 without his consent have got changed Khata of the said property in their names, but on perusal of the RTC Extract i.e., Ex.P.1 produced by the plaintiff No.2, which clearly shows that, the said property is standing in the name of the plaintiffs and the defendant No.2 to 4 separately. In that regard the defendants also produced Ex.D.21 mutation. On

perusal of the said document it clearly shows that the Sy.No.40/1A an extent of 2-24 guntas was subdivided as Sy.No.40/1A an extent of 0-21 guntas in the name of defendant No.2 Sri.Mallesappa, Sy.No.40/4 an extent of 0-01 guntas in the name of Hulugappa i.e., plaintiff No.2, Sy.No.40/5 an extent of 1-01 guntas in the name of Hanumantappa i.e., defendant No.3 and Sy.No.40/6 an extent of 1-01 guntas in the name of Basappa i.e., defendant No.4. Hence, it clearly shows that already the schedule property was divided between plaintiff No.2 and defendant No.2 to 4 and as per the partition the katha also changed in their names.

26. Even regarding partition, the PW.1 also in his cross examination has clearly admitted stating that:

"ಸರ್ವೆ ನಂ.40/1 ರಲ್ಲಿ 1 ಗುಂಟೆಯನ್ನು ವಿಭಾಗದಿಂದ ಕೊಟ್ಟಿದ್ದಾರಾ ಎಂದರೆ ಸಾಕ್ಷಿಯು ನಾನೇ ಪಡೆದುಕೊಂಡಿದ್ದೆ ಎಂದು ಹೇಳುತ್ತಾರೆ. ಮನೆಯಲ್ಲಿ ನಾನೇ ಮುಖ್ಯಸ್ಥ ಹಾಗೂ ದೊಡ್ಡವನಾಗಿದ್ದರಿಂದ ನಾನೇ 1 ಗುಂಟೆಯನ್ನು ಪಡೆದುಕೊಂಡಿದ್ದೆ ಎಂದು ಹೇಳುತ್ತಾರೆ. ನನಗೆ 1 ಎಕರೆ

ಜಮೀನು ಇದೆ. ಆದ್ದರಿಂದ 1 ಗುಂಟೆ ಮಾತ್ರ ಸಾಕು ಎಂದು ಪಡೆದುಕೊಂಡಿದ್ದೀರಾ ಎಂದರೆ ಸಾಕ್ಷಿಯು ಸರಿ ಎಂದು ಹೇಳುತ್ತಾರೆ. ಅದರಂತೆ ದಾಖಲೆಯು ಸಹಾ ಬಂದಿದೆ ಎಂದರೆ ಸರಿ.”

Further the PW.1 has also admitted that:

"ಸರ್ವೆ ನಂ.40/2 ಎ ಯಾವ ದಿನಾಂಕದಂದು ಕ್ರಯ ಮಾಡಿಕೊಂಡಿತ್ತು ಎಂದು ನೆನಪಿಲ್ಲ. ಸುಮಾರು 1995 ನೇ ಇಸವಿಯಲ್ಲಿ ಕ್ರಯ ಮಾಡಿಕೊಂಡಿದ್ದೀರಾ ಎಂದರೆ ಇರಬಹುದು. ಸದರಿ ಸಮಯದಲ್ಲಿ ಒಬ್ಬ ವ್ಯಕ್ತಿಗೆ ಎಷ್ಟು ದಿನಗೂಲಿ ಇತ್ತು ಎಂದರೆ ಸಾಕ್ಷಿಯು ನೆನಪಿಲ್ಲ ಎಂದು ಹೇಳುತ್ತಾರೆ. ಸರ್ವೆ ನಂ.40/2 ಎ ಯನ್ನು ಒಟ್ಟು ಕುಟುಂಬದ ಆದಾಯದಿಂದ ಖರೀದಿ ಮಾಡಿದ್ದರೂ ಸಹ ನಾನು ಸುಳ್ಳು ಹೇಳುತ್ತಿದ್ದೇನೆ ಎಂದರೆ ಸರಿಯಲ್ಲ. ಅದರಂತೆ ವಿಭಾಗ ಮಾಡಿ ನನಗೆ 1 ಎಕರೆ ಸರ್ವೆ ನಂ.40/2 ಎ ರಲ್ಲಿ ಕೊಟ್ಟು ಖಾತೆ ಬದಲಾವಣೆ ಆಗಿದೆ ಎಂದರೆ ಸರಿ. 1 ಗುಂಟೆ ಜಮೀನನ್ನು ಸರ್ವೆ ನಂ.40/1 ಎ ರಲ್ಲಿ ನನಗೆ ಕೊಟ್ಟು ಖಾತೆ ಆಗಿರುತ್ತದೆ ಎಂದರೆ ಸರಿ. ಸರ್ವೆ ನಂ.40/2 ಎ ರಲ್ಲಿ ನನಗೆ ಬಂದ ವಿಸ್ತೀರ್ಣ 1 ಎಕರೆಯನ್ನು 2015 ರಲ್ಲಿ ಮಾರಾಟ ಮಾಡಿದ್ದೇನೆ ಎಂದರೆ ಸರಿ. ಸರ್ವೆ ನಂ.40/2 ಎ ತಾಯಿ ಹೆಸರಿನಲ್ಲಿ ಕೊಂಡಿದ್ದು ಅದರಲ್ಲಿ ಜುಬಾನಿ ಹಿಸ್ಸೆ ಪ್ರಕಾರ ನನಗೆ ಬಂದ 1 ಎಕರೆಯನ್ನು ಮಾರಾಟ ಮಾಡಿದ್ದೇನೆ ಎಂದರೆ ಸರಿ.

Hence, in this case, on perusal of the above said deposition, it clearly shows that, already there was a Jubani Hiss in between the plaintiffs and the defendant No.2 to 4 with respect to their family properties and the same was admitted by the PW.1 in his cross-examination and in the said partition the schedule property was also partitioned and as per the

partition Khata also changed in their names. Thereafter, the plaintiff No.2 has sold 1 acre in Sy.No.40/2A in favour of the defendant No.5 which was acquired by him in the said partition. The defendant No.5 has also clearly contended in his written statement that, there was a Jubani Hissa in between the plaintiffs and the defendant No.2 to 4. Moreover in this case the legal heirs of defendant No.1 also filed memo by adopting the written statement of defendant No.2 to 4 and admitted the partition taken place between plaintiffs and defendant No.2 to 4. Hence, it clearly shows that, already there was a Juban Hissa took place between the plaintiffs and the defendant No.2 to 4 and in the said partition the schedule property also divided in between plaintiff No.2 and defendant No.2 to 4 and after acquiring his share in the Jubain Hissa, the plaintiff No.2 has sold 1 acre of property in favour of the defendant No.5 and now once again the plaintiff has filed the present suit

seeking relief of partition and separate possession which is not maintainable. Even on perusal of the Ex.P.1, it shows that, the property bearing Sy.No.40/1A measuring 1 gunta of land is still standing in the name of the plaintiff No.2 and even on perusal of the Ex.D.21 Mutation produced by the defendants also shows that, after the partition, the Khata of the property bearing Sy.No.40/1A measuring 1 guntas was changed in the name of the plaintiff No.2 and later the share of plaintiff No.2 has become Sy.No.40/4 an extent of 0-01 gunta. Hence, in this case when the plaintiff No.2 himself has been admitted that, already there was a partition took place between the plaintiffs and the defendant No.2 to 4 in their family properties and after the partition, he sold his share measuring 1.00 acre in favour of the defendant No.5, the suit of the plaintiffs is not maintainable. Therefore, the plaintiff No.2 has failed to prove that, the suit schedule property is the joint

family property of the plaintiff No.2 and the defendant No.1 to 4, because, the Khata of the schedule property was changed in the name plaintiff No.2 and defendant No.2 to 4 as per the partition. Hence, on perusal of the entire oral and documentary evidence, it clearly shows that the plaintiff No.2 has failed to prove his case. Therefore, the Trial Court has rightly dismissed the suit of the plaintiffs. Hence, **I answer Point No.1 in the Negative.**

27. **POINT NO.2:-** In this case, the Trial Court after perusing the entire record and after considering the documents and pleadings of the parties has rightly come to the conclusion that the plaintiff has failed to prove that he is entitled for partition and separate possession in the suit schedule property. The Judgment and decree passed by the Trial Court does not calls for any interference by this court. **Hence, I answer this point No.2 in the Negative.**

28. **POINT NO.3:** In view of my findings on the above point No.1 and 2, I pass the following:

ORDER

The Appeal filed by the appellant/ plaintiff No.2 is hereby dismissed with costs.

The judgment and decree passed by the learned II Addl. Civil Judge and JMFC, Shikaripura, in OS.No.159/2017 on 30.10.2025 is hereby confirmed.

Draw decree accordingly.

Office is directed to return the entire records in OS.No159/2017 to the Trial Court along with the copy of the judgment and decree of this appeal.

(Dictated to the Stenographer, transcribed the script and computerized by her, corrected and signed by me and then pronounced in the open Court on this 10th day of June, 2026)

(B.N.RAMESH BABU)
SENIOR CIVIL JUDGE & JMFC.,
SHIKARIPURA.