



**IN THE COURT OF VI ADDL.DISTRICT AND SESSIONS JUDGE,
TUMAKURU.**

DATED THIS THE 15th DAY OF JUNE, 2026

: PRESENT:

SMT.SHILPA K.S, B.AL, LL.M.,
VI Addl. District & Sessions Judge,
Tumakuru.

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APPELLANT/S:

Veerupakshaiah, S/o Late Siddaramanna
A/a.61 years, R/at. Kodihalli village,
Kestur Post, Kora Hobli, Tumakuru Taluk,
Tumakuru District.

[By: Sri. H.B.G.K., Advocate]

V/s

RESPONDENT/S:

1. Mahalingamma, D/o Late Ganganna,
W/o Panchakshri, A/a.51 years,
R/o. Puralagunte, Sorekunte Post,
Kora Hobli, Tumakuru Taluk & District.

Smt. Gowramma @ Gangamma, Dead by Lrs.,
2. K.S. Paramesh, S/o Late Siddaramanna
A/a.57 years, Lab Technician, Ambli
Diagnostic Center, J.C. Road, Tumakuru.
3. Parvathamma, W/o Late Ganganna
A/a.81 years,
4. K.G.Harisha, S/o Late Ganganna, A/a.47 years,
5. G.K. Siddaramanna, S/o Late Ganganna
A/a.71 years,

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Siddappa, Dead by Lrs.,

6. Smt. Rathnamma, W/o Late Siddappa
A/a.71 years
7. Prakash, S/o Late Siddappa, A/a.49 years,

Respondents No.3 to 7 are R/at. Kodihalli
village, Kestur Post, Kora Hobli,
Tumakuru Taluk, Tumakuru Dist.

8. The Special Land Acquisition Officer,
KIADB, Sudharshan Hotel Building,
Nrupathunga Road, Bangalore-560 001.

**(R1, 5 to 7- Exparte, R3 & 4 by Sri.K.S.S.,
R8 by Sri.A.N.G., Advocate)**

Date and nature of the Decree or Order appealed against	Judgment and decree dated 25.10.2018 pronounced by the learned II Addl.Senior Civil Judge & JMFC, Tumakuru by decreeing the suit of the plaintiff in O.S.No.20/2012.		
Date of institution of the appeal	19.07.2023		
Date of Judgment pronounced	15.06.2026		
Duration of the appeal	Year/s	Month/s	Day/s
	02	10	26

(SHILPA. K.S.)

VI Addl.District & Sessions Judge,
Tumakuru.

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

This is an appeal directed against the Judgment and decree passed in O.S.No.20/2012 by the learned II Addl.Senior Civil Judge & JMFC, Tumakuru, dt.25.10.2018.

2. The parties are referred to their original ranking for the convenience sake.

3. The brief facts of the plaint is that one Chikkarangaiah and Akkamma had six children namely Nanjaiah, Mudlaiah, Siddaramananna, Rangappa, Ganganna and Siddappa. Among them, Chikkarangaiah, Akkamma, Nanjaiah, Mudlaiah, Siddaramanna and Ganganna are no more. The 1st defendant is the wife of Siddaramanna and defendants No.2 and 3 are their children. The 4th defendant is the wife of Ganganna. The plaintiff and defendants No.5 and 6 are their children. During the lifetime of Chikkarangaiah, he was managing the suit schedule properties as kartha of the family. He has effected partition by executing the partition deed dt.25.11.1960 in which the suit schedule properties were allotted jointly in favour of

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Siddaramanna, Ganganna and the 7th defendant. After the death of Siddaramanna and Ganganna, the plaintiff and defendants No.1 to 6 have survived. They have equal right to claim partition in the suit schedule properties. The plaintiff and defendants No.1 to 7 are the members of Hindu undivided joint family. The suit schedule properties are the joint family properties of the plaintiff and defendants No.1 to 7. They are in joint possession and enjoyment of the same. That two days back before filing the suit, the plaintiff reliably learnt that the suit schedule items No.1 to 3 properties are acquired by the 8th defendant. Immediately, the plaintiff has approached defendants No.1 to 7 and enquired the matter with them. At that time, the plaintiff learnt that defendants No.1 to 7 colluding together are making hectic attempts to draw the compensation amount by keeping the plaintiff in dark. Therefore, the plaintiff demanded the defendants to allot her legitimate share in the suit schedule properties for which they

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have refused. The plaintiff has 5/48th share in the suit schedule properties. Hence, the plaintiff has filed the present suit.

4. After service of summons on the defendants No.1, 2, 4 to 6 and 8 have appeared before the trial Court and only the defendants No.1, 4 to 6 and 8 have filed written statement. The defendant No.3 after service of summons on him did not appeared and hence he was placed exparte. However the defendant No.7 was reported to be dead during the pendency of the suit and his legal heirs even after service of summons have not appeared and hence they were placed exparte.

5. The averments of the written statement of the defendants No.1 and 6 are as under :

These defendants have not disputed the relationship in between the plaintiff and defendants No.1 to 7 and the registered partition taken place on 25.11.1960. The other averments of the plaint are denied. That one Chikkarangaiah had purchased the suit schedule item No.2 property from Siddappa @ Siddagangappa under registered sale deed dt.

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06.09.1936 for valuable consideration. Since then, he was in possession and enjoyment of the said property as absolute owner by raising crops regularly along with his family members. Due to lack of knowledge, he has not got the RTC as per registered sale deed in his favour. The said Chikkarangaiah has purchased 1-20 guntas of land in suit schedule item No.3 property from Seebirangaiah under registered sale deed dt. 10.05.1956. Since then, he was in possession and enjoyment of the said property as absolute owner. Due to mistake or oversight, the revenue authority has accepted the khatha and pahani in favour of defendants No.1, 3 and 7 jointly to an extent of 0-16 guntas instead of 1-20 guntas. The defendants No.1 and 6 have filed application before the Thasildar to mutate the khatha and pahani as per registered sale deeds in respect of the aforesaid properties purchased by Chikkarangaiah. The said application is still pending. That after the death of Chikkarangaiah, his class-I legal heirs are in possession and enjoyment of the aforesaid properties. In the

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partition dt.25.11.1960, the suit schedule properties are the other properties bearing Sy.No.154/8 and 154/9 of Kesturu Village, Sy.No.3/22 and 5/1 of Kodihalli Village, Sy.No.87/1 of Kesturu Amanikere Village and house properties bearing Khaneshumari No.195/132, 116/114 and 22/123 of Kodihalli village were fallen to the share of Siddaramaiah, Ganganna and Siddappa jointly. Since the date of partition, they are in joint possession and enjoyment of the same as absolute owners. After their death, their legal heirs are in possession and enjoyment of the same as absolute owners. The father of the plaintiff died on 10.05.2005 i.e before amendment of Hindu Succession Act. Therefore, the plaintiff is not entitled for share as claimed by her. The plaintiff is not joint family member and she is not in joint possession and enjoyment of the suit schedule properties. Since, the plaintiff has not included other joint family properties, the suit is bad for non-joinder of necessary properties. Hence, prayed to dismiss the suit.

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6. The averments of the written statement of the defendants No.4 and 5 are as under :

These defendants have admitted the relationship between the plaintiff and defendants No.1 to 7. The suit schedule properties are their joint family properties in which they are in joint possession and enjoyment and the suit schedule items No.1 to 3 properties are acquired by the 8th defendant. The defendants No.1, 2, 6 and 7 along with one Prakash, the son of 7th defendant by suppressing the material facts, existence of the joint family and without disclosing the persons who are all eligible for drawing the compensation amount have given false, fabricated and forged records to the 8th defendant. The signature in the consent letter is not the signature of 4th defendant. Her signature is concocted and in the genealogical tree, the names of plaintiff and defendants No.3 and 5 have been left. They are also entitled to receive the compensation amount from the 8th defendant. The 8th defendant without considering the same has paid the compensation amount in

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respect of the said properties. Inspite of issuance of legal notice by the 5th defendant, the 8th defendant has not taken any action. Hence, prayed to pass judgment and decree to declare that the compensation paid by the 8th defendant excluding defendants No.4 and 5 in respect of suit schedule item No.1 property is not binding on them, to pay compensation after apportionment of their share in respect of the suit schedule item No.1 property and to allot their legitimate share in the remaining properties.

7. The averments of the written statement of the defendant No.8 is as under :

It is true that they have acquired the suit schedule items No.1 to 3 properties. That the plaintiff has not issued statutory notice before filing of suit and hence the suit is not maintainable. The plaintiff has alternative remedy under Section 30 of the Land Acquisition Act. The 8th defendant is no way concerned to the dispute between the plaintiff and defendants No.1 to 7. After enquiry, the 8th defendant has disbursed the compensation to

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the 1st defendant in respect of the suit schedule item No.1 property, to Thimmakka in respect of 1-16 guntas in Sy.No.31/2B and deposited the award amount before the court in respect of the land bearing Sy.No.31/2A measuring 14-08 guntas. The Court fee paid by the plaintiff is insufficient. Hence, prayed to dismiss the suit.

8. After perusing the pleadings of the parties the trial court has framed :

:: I S S U E S ::

1. Whether plaintiff proves that she and defendants No.1 to 7 are joint family members and the suit schedule properties are their joint family properties?
2. Whether plaintiff proves her 5/48th share in the suit schedule properties?
3. Whether 8th defendant proves that the court fee paid by plaintiff is insufficient?
4. Whether plaintiff is entitled for the reliefs as prayed?
5. What order or decree?

**ADDITIONAL ISSUES DATED 19.01.2017**

1. Whether defendants No.4 and 5 prove that the compensation paid by the 8th defendant in respect of suit schedule item No.1 property excluding them is not binding on them and they are entitled for share in it?
2. Whether defendants No.4 and 5 are entitled for their legitimate share in the remaining properties? If so, at what extent?
3. Whether defendants No.4 and 5 are entitled for the relief of declaration as prayed?

ADDITIONAL ISSUES DATED 12.01.2018

1. Whether defendants No.1 and 6 prove that the suit schedule items No.2 and 3 properties are purchased by Chikkarangaih and after his death, his class-I legal heirs are in its possession and enjoyment?
2. Whether defendants No.1 and 6 prove that the suit is bad for non-joinder of necessary properties?
9. In order to prove this plaintiff has got examined herself as PW.1 and got marked 10 documents as Ex.P.1 to Ex.P.10 and closed her side.

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By way of rebuttal the defendants No.5, 6 were got examined as DW1 and 2 and got marked 20 documents as per Ex.D.1 to Ex.D.20 and closed their side.

10. The trial court after hearing both sides has decreed the suit of the plaintiff by holding the issues in negative against the defendants.

11. Highly aggrieved by the judgment and decree of the learned trial court on 25.10.2018 in O.S.No.20/2012 the defendant No.2 has preferred the present appeal on the following grounds :

a) The judgment and decree passed by the learned trial court is perverse, capricious, illegal and the same is liable to be set-aside.

b) The learned trial court failed to appreciate that, after filing the suit the learned trial issued suit summons and notice to all defendants. The summons and notice issued against defendant No.1, 3 to 7 held sufficient and they have appeared through their respective counsels, but notice not served to the

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2nd defendant/appellant in accordance with law. The learned trial court had issued summons and notice to the defendant No.2 through court and RPAD. The summons through court is returned with shara "ಪ್ರತಿವಾದಿಯವರು ಈ ವಿಳಾಸದಲ್ಲಿ ಬೇರೆ ಊರಿನಲ್ಲಿ ವಾಸವಿದ್ದಾರೆಂದು ತಿಳಿಸಿದ್ದರಿಂದ ಜಾರಿಗೆ ಅವಕಾಶವಿಲ್ಲದೆ ವಾಪಸ್ಸು " as per the report dt. 04/12/2012. The summons sent by RPAD returned with shara "Addressee left" vide un-served RPAD cover dt.22/08/2014. Thereafter on 15/09/2014 the plaintiff filed an application under V Rule 20 of CPC for substitute service of summons by way of affixture, on the same day the trial court allowed the application and issue summons to defendant No.2 by way affixture. As per the affixture report dt. 14/10/2014 "summons affixed by the address stated in the cause title". That on 18/10/2014 one A.B advocate filed memo for appearance on behalf of 2nd defendant. Then the matter was posted to 11/12/2014, but vakalath is not filed.

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c) The learned trial court has not passed specific order regarding service of summons of the defendant No.2.

d) That on 18/10/2018 one A.B advocate filed memo for appearance stating that "2nd defendant has duly instructed him to defend above case. For the personal inconvenience, the defendant No.2 could not able to file vakalath and will file Vakalath on the next date of hearing. Hence permission may be granted. Regarding the above memo the learned trial court not passed any order.

e) The appellant had not received the summons from the trial court and he has no knowledge about institution of the present suit. Hence, question of filing memo for appearance does not arise.

f) The summons sent through court is returned with shara that "ಪ್ರತಿವಾದಿಯವರು ಈ ವಿಳಾಸದಲ್ಲಿ ಬೇರೆ ಊರಿನಲ್ಲಿ ವಾಸವಿದ್ದಾರೆಂದು ತಿಳಿಸಿದ್ದರಿಂದ ಜಾರಿಗೆ ಅವಕಾಶವಿಲ್ಲದೆ ವಾಪಸ್ಸು ಮಾಡಿರುತ್ತೇನೆ" and RPAD returned with shara "Addressee left". Thereafter the learned trial court

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was pleased to issue service of summons by way of affixture to same address. Hence service of summons to the 2nd defendant is not sufficient.

g) That during the year 2012 the 2nd defendant was residing at 1st floor, behind Jain temple, Honsapete (Harale Pate) Tumakuru, upto 2019 he was residing in the said address. Thereafter, the appellant come to address stated in the cause title. The plaintiff with only intention to avoid the summons and notice and she gave the wrong address.

h) The appellant has good case on merits, hence matter may be remanded back to the trial court for fresh disposal with opportunity to give the appellant for contest the suit.

i) The judgment and decree passed by the trial court is full of surmises and has not properly appreciated the oral and documentary evidence in a proper perspective manner. Hence, the same is liable to be set-aside.

12. Also after service of the notices the respondent No.1, 2, 5 to 7 have not appeared before this court and placed

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absent. The respondents No.2, 4, 8 have appeared through their counsel but not filed any cross objections.

13. The appellant has got examined himself as PW.1 on I.A.No.1 and got marked 11 documents as per Ex.P.1 to 11. The Ex.R.1 was got marked by way of confrontation.

14. I have secured the trial court records. Heard the counsel for appellant and R.3 and 4. That inspite of providing several opportunity the respondents No.8 have not argue on the case and hence their side of arguments is taken as not addressed. Perused the trial court record, pleadings, evidence, and available material placed on record before the court.

15. The following points that would arise for my consideration are :

1. Has the plaintiff/respondent No.1 proves that she and the defendants No.1 to 7 constitute Hindu undivided joint family and the suit property are ancestral properties ?
2. Has the plaintiff/respondent No.1 proves that she is entitled for the share in the suit properties by metes and bounds ?

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3. Has the defendant No.1/appellant prove that the impugned judgment and decree passed by the trial court in O.S.No.20/2012 dt.25.10.2018 is illegal, perverse and contrary to the provisions of law as well as on facts of the case ?
4. Has interference of this court is necessary? If so to what extent ?
5. What order ?

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

Point No.1 : In affirmative

Point No.2 : In affirmative

Point No.3 : In negative

Point No.4 : In negative

Point No.5 : As per final order for the following:

:: REASONS ::

17. Point No.1 and 2 :- These points will be taken at one stretch for my discussion as they are inter related with each other.

The plaintiff has filed this suit claiming her share in the suit properties which was denied by the defendants No.1 and 6

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stating that suit schedule items No.2 property was purchased by Chikkarangaiah from Siddappa @ Siddagangappa under registered Sale deed dt.06.09.1936, 1-20 guntas of land in suit schedule item No.3 property was purchased by Chikkarangaiah from Seebirangaiah under registered Sale deed dt.10.05.1966 and after his death, his class-I legal heirs are in its possession and enjoyment of the same. Neither the plaintiff nor the other defendants have denied these facts. In the instant case the relationship in between the plaintiff and the defendants No.1 to 7 are not under dispute.

18. In order to prove this the plaintiff has got examined herself as PW.1 by reiterating all the averments of the plaint in her affidavit. In her cross examination she has admitted that,

“ನನಗೆ ದಾವಾಸ್ವತ್ತುಗಳ ಸರ್ವೆ ನಂಬರ್, ವಿಸ್ತೀರ್ಣ ಹಾಗೂ ಚಕ್ಕುಬಂದಿ ಗೊತ್ತು.

ಅವುಗಳು ಎಷ್ಟು ವಿಸ್ತೀರ್ಣಕ್ಕೆ ಪೋಡುಗಳಾಗಿವೆ ಎಂದು ನನಗೆ ನೆನಪಿಲ್ಲ. ಸದರಿ ಸ್ವತ್ತಿನ ಚಕ್ಕುಬಂದಿ

ಸಹ ನನಗೆ ನೆನಪಿಲ್ಲ. ನಾನು ಸದರಿ ಜಮೀನಿನ ಸ್ವಾಧೀನದಲ್ಲಿಲ್ಲದ ಕಾರಣ ನನಗೆ ಚಕ್ಕುಬಂದಿ

ಗೊತ್ತಿಲ್ಲ ಎಂದರೆ ಸರಿ. ಸರ್ವೆ ನಂ.3/13 ರ ಒಟ್ಟು ಎಷ್ಟು ವಿಸ್ತೀರ್ಣವಿದೆ ಎಂದು ನನಗೆ ನೆನಪಿಲ್ಲ.

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ಅದರ ಚಕ್ಕುಬಂದಿ ಸಹ ನನಗೆ ನೆನಪಿಲ್ಲ. ನಾನು ದಾವಾಸ್ವತ್ತುಗಳ ಸ್ವಾಧೀನದಲ್ಲಿಲ್ಲದ ಕಾರಣ ಅವುಗಳ ವಿಸ್ತೀರ್ಣ ಹಾಗೂ ಚಕ್ಕುಬಂದಿ ನನಗೆ ಗೊತ್ತಿಲ್ಲ ಎಂದರೆ ಸಾಕ್ಷಿ ನುಡಿಯುತ್ತಾರೆ ಚಕ್ಕುಬಂದಿ ಎಂದರೇನು ಎಂದು ನನಗೆ ಗೊತ್ತಿಲ್ಲ. ಸಾಕ್ಷಿಗೆ ಅದನ್ನು ಪುನಃ ಅರ್ಥ ಮಾಡಿಸಿ ಕೇಳಲಾದರೂ ಸಹ ಸಾಕ್ಷಿ ಅದಕ್ಕೆ ಉತ್ತರ ನೀಡಿಲ್ಲ. ದಾವಾಸ್ವತ್ತುಗಳಲ್ಲಿ ಯಾವುದು ಪಿತ್ರಾರ್ಜಿತ ಸ್ವತ್ತುಗಳು ಹಾಗೂ ಯಾವ ಯಾವ ಸ್ವತ್ತುಗಳು ಕ್ರಯಕ್ಕೆ ಖರೀದಿಸಿದ ಸ್ವತ್ತುಗಳು ಎಂದು ಗೊತ್ತೇ ಎಂದರೆ ಸಾಕ್ಷಿ ನುಡಿಯುತ್ತಾರೆ ಎಲ್ಲವೂ ಪಿತ್ರಾರ್ಜಿತ ಸ್ವತ್ತುಗಳು. ನನ್ನ ತಂದೆ ದಿ:10.05.2005 ರಂದು ಮೃತಪಟ್ಟಿದ್ದಾರೆಂದರೆ ಸಾಕ್ಷಿ ನುಡಿಯುತ್ತಾರೆ ದಿನಾಂಕ ನನಗೆ ನೆನಪಿಲ್ಲ. ಆದರೆ 13 ವರ್ಷಗಳ ಹಿಂದೆ ಮೃತಪಟ್ಟಿರುತ್ತಾರೆ. ನನ್ನ ತಂದೆಯ ಮರಣದ ನಂತರ ಕುಟುಂಬದ ಆಗುಹೋಗುಗಳನ್ನು 4ನೇ ಪ್ರತಿವಾದ ನೋಡಿಕೊಳ್ಳುತ್ತಿದ್ದರು ಎಂದರೆ ಸಾಕ್ಷಿ ನುಡಿಯುತ್ತಾರೆ ಎಲ್ಲರೂ ಒಟ್ಟು ಕುಟುಂಬದಲ್ಲಿ ಇದ್ದು ನೋಡಿಕೊಳ್ಳುತ್ತಿದ್ದರು. ಯಾವಾಗ ಭೂಸ್ವಾಧೀನವಾಯಿತು ಎಂದು ನನಗೆ ನೆನಪಿಲ್ಲ."

19. The PW.1 has relied upon RTC with respect to the suit schedule items No.1 to 3 properties for the year 2010-11 as per Ex.P.1 to Ex.P.3. The Ex.P.4 to 8 are the RTC with respect to suit schedule items No.4 to 6 properties for the year 2011-12. The Ex.P.9 and 10 are the copies of sale deeds.

20. Further on perusal of the said documents, the khatha and pahani of the suit schedule item No.1 property is

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standing in the joint names of defendants No.1, 4 and 7. The khatha and pahani of the suit schedule items No.2 property is standing in the name of the 7th defendant. The khatha and pahani of the suit schedule item No.3 property is standing in the name of Chikkarangaiah. The khatha and pahani of the suit schedule items No.4 to 6 properties are also standing in the name of Chikkarangaiah. The plaintiff has not produced any documents in respect of suit schedule items No.7 and 8 properties.

21. Further the defendant No.3 has got examined himself as DW.1 by reiterating all the averments of the written statement in his affidavit. In his cross examination he has admitted that,

“ನಿಡಿ-10 ರಲ್ಲಿ ನನ್ನ ಹಾಗೂ ವಾದಿಯ ಹೆಸರನ್ನು ನಮೂದು ಮಾಡಿಲ್ಲ ಎಂದರೆ ಸರಿ . ನಿಡಿ-10 ರಲ್ಲಿರುವ ಪಾರ್ವತಮ್ಮ ಎಂಬ ಸಹಿ ಅವರ ಸಹಿ ಅಲ್ಲ ಎಂದರೆ ಸರಿ .

ನಿಡಿ-11 ರಲ್ಲಿ 2ನೇ ಪುಟದಲ್ಲಿರುವ ಪಾರ್ವತಮ್ಮ ಎಂಬ ಪೋಟೋದ ಮೇಲೆ ಮಾಡಿರುವ ಸಹಿ ನನ್ನ ತಾಯಿಯ ಸಹಿ ಅಲ್ಲ ಎಂದರೆ ಸರಿ. ನಾನು ಹುಟ್ಟಿ ಬೆಳೆದದ್ದು

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ಚಿಕ್ಕನಾರವಂಗಲದಲ್ಲಿ ಎಂದರೆ ಸಾಕ್ಷಿ ನುಡಿಯುತ್ತಾರೆ ನಾನು ಹುಟ್ಟಿದ್ದು ಕೋಡಿಹಳ್ಳಿಯಲ್ಲಿ ಹಾಗೂ ವಿದ್ಯಾಭ್ಯಾಸ ಮಾಡಿದ್ದು ಚಿಕ್ಕನಾರವಂಗಲದಲ್ಲಿ. ನಾನು ಕೋಡಿಹಳ್ಳಿಯಲ್ಲಿ ವಾಸವಿದ್ದ ಬಗ್ಗೆ ನನ್ನ ಬಳಿ ಯಾವುದೇ ದಾಖಲೆಗಳು ಇಲ್ಲ ಎಂದರೆ ಸಾಕ್ಷಿ ನುಡಿಯುತ್ತಾರೆ ನಾನು ಅಲ್ಲಿ ವಾಸವಿರಲಿಲ್ಲ ಆದರೆ ಹೋಗಿ ಬರುತ್ತಿದ್ದೆನು. ನನ್ನ ತಂದೆಯ ಮರಣದ ನಂತರ ನನ್ನ ತಾಯಿ ಪಾರ್ವತಮ್ಮನವರು ಕುಟುಂಬದ ಮುಖ್ಯಸ್ಥರು ಎಂದರೆ ಸರಿ.”

22. The defendant No.6 has got examined himself as DW.2 by reiterating all the averments of the written statement in his affidavit. In his cross examination he has admitted that

“ಚಿಕ್ಕರಂಗಯ್ಯನವರಿಗೆ ನಂಜಯ್ಯ, ಮೂಡಲಯ್ಯ, ಸಿದ್ದರಾಮಯ್ಯ, ರಂಗಪ್ಪ ಗಂಗಪ್ಪ ಹಾಗೂ ಸಿದ್ದಪ್ಪ ಎಂಬ ಹೆಸರಿನ 6 ಜನ ಗಂಡುಮಕ್ಕಳು ಎಂದರೆ ಸರಿ. ಆ ಪೈಕಿ ಗಂಗಪ್ಪ ಮೃತಪಟ್ಟಿದ್ದಾರೆಂದರೆ ಸರಿ. ಸದರಿ ಗಂಗಪ್ಪನವರಿಗೆ ಪಾರ್ವತಮ್ಮ, ಹರೀಶ್, ಮಹಾಲಿಂಗಮ್ಮ ಹಾಗೂ ಸಿದ್ದರಾಮಣ್ಣ ಎಂಬ ಹೆಸರಿನ ವಾರಸುದಾರರು ಎಂದರೆ ಸರಿ. ಗಂಗಪ್ಪನವರಿಗೆ ಸಂಬಂಧಿಸಿದ ಸ್ವತ್ತಿಗೆ ಮೇಲೆ ಸೂಚಿಸಿದ ವಾರಸುದಾರರು ಅನುಭವವನ್ನು ಹೊಂದಿರುತ್ತೇವೆಂದರೆ ಸರಿ. ದಿ:25.11.1960 ರಲ್ಲಿ ಚಿಕ್ಕರಂಗಯ್ಯನ ಗಂಡುಮಕ್ಕಳು ಅವರಿಗೆ ಸೇರಿದ ಆಸ್ತಿಗಳನ್ನು ವಿಭಾಗ ಮಾಡಿಕೊಂಡಿರುತ್ತಾರೆಂದರೆ ಸಾಕ್ಷಿ ನುಡಿಯುತ್ತಾರೆ ನಂಜಯ್ಯ, ಮೂಡಲಯ್ಯ ಮತ್ತು ರಂಗಪ್ಪ ಮಾತ್ರ ವಿಭಾಗ

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ಮಾಡಿಕೊಂಡು ಬೇರೆ ಇದ್ದಾರೆ. ಸಿದ್ಧರಾಮಣ್ಣ, ಗಂಗಪ್ಪ ಹಾಗೂ ಸಿದ್ಧಪ್ಪ ಒಟ್ಟಿಗೆ ಇದ್ದರು. ಸದರಿ ವಿಭಾಗದಲ್ಲಿ ದಾವಾಸ್ವತ್ತುಗಳನ್ನು ಹಾಗೂ ಇತರೆ ಸ್ವತ್ತುಗಳನ್ನು ಸಿದ್ಧರಾಮಣ್ಣ, ಗಂಗಪ್ಪ ಮತ್ತು ಸಿದ್ಧಪ್ಪನವರ ಭಾಗಕ್ಕೆ ಕೊಟ್ಟಿರುತ್ತಾರೆಂದರೆ ಸರಿ. ಸಿದ್ಧರಾಮಣ್ಣ, ಗಂಗಪ್ಪ ಹಾಗೂ ಸಿದ್ಧಪ್ಪ ಎನ್ನುವವರು ಸದರಿ ವಿಭಾಗ ಪತ್ರದಲ್ಲಿ ಅವರುಗಳ ಒಟ್ಟು ಭಾಗಕ್ಕೆ ಬಂದ ಸ್ವತ್ತುಗಳನ್ನು ಅವರುಗಳು ವಿಭಾಗ ಮಾಡಿಕೊಂಡಿಲ್ಲ ಎಂದರೆ ಸರಿ. ಸದರಿ ಸ್ವತ್ತುಗಳನ್ನು ಸಿದ್ಧರಾಮಣ್ಣ, ಗಂಗಪ್ಪ ಹಾಗೂ ಸಿದ್ಧಪ್ಪನವರ ವಾರಸುದಾರರು ಒಟ್ಟಿಗೆ ಅನುಭವಿಸಿಕೊಂಡು ಬರುತ್ತಿದ್ದವು ಎಂದರೆ ಸರಿ. ದಾವಾ 1 ರಿಂದ 3 ನೇ ಐಟಂ ಸ್ವತ್ತುಗಳನ್ನು ಕೆ.ಎ.ಎ.ಡಿ.ಬಿ. ರವರು ಸ್ವಾಧೀನಪಡಿಸಿಕೊಂಡಿದ್ದಾರೆಂದರೆ ಸರಿ. ಸದರಿ ಸ್ವತ್ತುಗಳ ಭೂಪರಿಹಾರದ ಹಣವನ್ನು ಪಡೆಯಲು ಗಂಗಪ್ಪನವರ ವಾರಸುದಾರರು ಸಹ ಅರ್ಹರು ಎಂದರೆ ಸರಿ. ಭೂಸ್ವಾಧೀನ ಅಧಿಕಾರಿಗಳವರ ಮುಂದೆ ನಾನು ಒಂದು ಪ್ರಮಾಣಪತ್ರವನ್ನು ಸಲ್ಲಿಸಿದ್ದೇನೆಂದರೆ ಸರಿ .

23. The Ex.D1 is the genealogical tree which is not dispute. The Ex.D.2 is the notice issued to defendants No.1, 2, 6, 7, Prakash and the 8th defendant. The Ex.D.3 to 9 are the postal receipts, unserved RPAD cover and acknowledgements. The Ex.D10 is the genealogical tree produced before defendant No.8.

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The Ex.D.11. The Ex.D.12 to 16 are the RTC with respect to the suit properties. The Ex.D.17 to 19 are the demand registers and Ex.D.20 is the death certificate of Ganganna.

24. The DW.2 has got marked sale deeds at Ex.P.9 and Ex.P.10 which shows that the item No.2 and 3 were purchased by the said Chikkarangaiah which is not able to disprove by the defendants. Hence the plaintiff has proved that the item No.2 and 3 were purchased by Chikkarangaiih and after his death, his class-I legal heirs are in possession and enjoyment of the said properties.

25. Further the plaintiff has contended that during the lifetime of Chikkarangaiah, on 27.11.1960, an partition took place in the joint family wherein the suit schedule properties and other joint family properties were divided in favour of Siddaramanna, Ganganna and Siddappa. These facts were admitted by the defendants No.1 and 6 in their written statement. Even though these facts were denied by the defendants No.4 and 5 in their written statement, but they have

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admitted that the suit schedule properties are Hindu undivided family properties of plaintiff and defendants No.1 to 7 in which they are in joint possession.

26. It is pertinent to note that the land bearing Sy.No.31/2B of Batsandra Village measuring 1-20 guntas was purchased by Chikkarangaiah on 10.05.1966 i.e after partition taken place under partition deed dt. 25.11.1960. Therefore, the said property could not be included in the said partition. Such being the circumstances, the other legal heirs of Chikkarangaiah i.e Nanjaiah and Mudlaiah have also succeeded to the said property.

27. The plaintiff has filed this suit claiming 5/48th share in the suit properties. The defendants No.1 and 6 have denied the coparcenary right of the plaintiff in the suit schedule properties and contended that since, the father of the plaintiff died on 10.05.2005 i.e before amendment of Hindu Succession Act, the plaintiff is not a coparcener and she is not entitled for share as claimed. The defendants have contended that as their

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father Ganganna died on 10.05.2005 the plaintiff is entitled for notional partition. The trial court had relied upon decision reported in 2016 (2) SCC 36 - Prakash & others V/s Phulavathi & others and considered the plaintiff as not the coparcenor as the father of the plaintiff by name Ganganna died prior to 09.09.2005 and hence granted the notional partition. That other judgments were also rendered by the honorable apex court later after pronouncement of this judgment. But the trial court had considered the judgment which was prevailed at the time of passing decree which is proper.

28. Hence considering the relationship between the parties, the plaintiff is entitled for 1/36th share in suit schedule items No.1, 2, 4 to 6 properties.

29. Further with respect to awarding compensation by the defendant No.8, it is admitted that compensation amount was disbursed in the name of the defendant No.1 . But as the other parties are also entitled for the said amount the disbursement amount in the name of the defendant No.1 is not

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proper and the other parties are also entitled for share in it. Further as rightly observed by the trial court the suit is bad for non joinder of necessary parties and hence both parties are directed to include those persons and excluded properties in the FDP proceedings and then to get the final decree. Therefore, she is entitled for 1/36th share in the suit schedule items No.1, 2 and 4 to 6 properties. The plaintiff is also entitled for 1/36th share in the land bearing Sy.No.154/8 measuring 0-15 guntas and Sy.No.154/9 measuring 0-10 guntas of Kesturu Village, Sy.No.3/22 measuring 0-01 gunta and Sy.No.5/1 measuring 1-09 guntas of Kodihalli Village, Sy.No.87/1 measuring 1-13 guntas of Kesturu Amanikere Village and house properties bearing Khaneshumari No.195/132 measuring 32 X 30 feet, No.116/114 measuring 30 X 30 feet and No.22/123 measuring 30 X 25 feet of Kodihalli village. Hence I answered the **points No.1 and 2 in affirmative.**

30. Points No.3 and 4 :- These points are taken together for common discussion, in order to avoid repetition of facts.

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The appellant has filed I.A.No.1 U/s 5 of limitation Act to condone the delay without mentioning the days of delay. The respondents have not filed objections. In this regard the appellant has got examined himself as PW.1 stating that he was not aware about the suit as no vakalat was filed on his behalf. That when he had received the notice in FDP.No.30/2021 he came to know about the decree of the suit and then he had obtained the certified copies and then filed this appeal. Hence he has requested to condone the delay in filing the appeal.

31. The PW.1 has denied the suggestion of the respondent counsel. The PW.1 in support of his case has got marked the copy of order sheet, amended plaint, written statement, judgment in O.S.NO.20/2012, copy of orders, application and notice in FDP.No.30/21 as per Ex.P.1 to 11.

32. So on perusal of these documents if the delay is condoned no hardship would be caused to the other side.

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Hence in the interest of justice I.A.NO.I is allowed on costs of Rs.1,000/-.

33. Further the appellant has filed I.A.No.II U/o.41 R.5 of CPC seeking stay of the impugned order. The respondents have not filed objections. That when the main appeal is itself disposed off then the question of considering the stay application does not arise at all. Hence I.A.NO.II is dismissed on without costs.

34. According to the appellant/defendant No.1 the impugned judgment and decree passed by the learned trial court in O.S.No.20/2012 dt.25.10.2018 is illegal, capricious and contrary to the provisions of law. Therefore it is liable to be set aside by intervention of this court. According to the appellant the learned trial judge while decreeing the suit has not considered the basic aspects. But in view of my above finding the appellant has failed to establish that the trial court has passed the impugned order as the plaintiff has no right over the suit property.

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35. Hence under these circumstances I found no ground to interfere over the judgment and decree of the trial court. No doubt the findings of the trial court in this regard is correct. On perusal of the entire judgment and its findings is based on the correct preposition of law and it has taken into consideration of all facts and circumstances and appreciated the evidence in a proper and right perspective and came to right conclusion. Therefore the findings of the trial court seem to be reasonable and acceptable one. No illegality or infirmity found in the judgment of the trial court. Hence interference by this court is not required. Hence the appellant is not successful in establishing the above points. Hence I answered the **points No.3 and 4 in negative.**

36. Point No.5: In view of my above finding on the above points I proceed to pass the following:

ORDER

Appeal is dismissed.

The impugned judgment and decree dated
25.10.2018 passed by the learned II Additional

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Senior Civil Judge & JMFC, Tumakuru in
O.S.No.20/2012 is hereby confirmed.

I.A.No.I filed U/s 5 of limitation Act is
hereby allowed on costs of Rs.1,000/-.

I.A.No.II filed U/o.41 R.5 of CPC is hereby
dismissed on without costs.

Parties are directed to bear their own
costs.

Draw decree accordingly.

Transmit the trial court records with the
copy of the appeal judgment.

(Dictated to the Stenographer Grade-1 directly on computer,
got typed by her, corrected, initialed and then pronounced by
me in open court on 15.06.2026).

(SHILPA. K.S.)
VI Addl.District & Sessions Judge,
Tumakuru.

ANNEXURE

List of witnesses examined for the appellants on I.A.No.1

P.W.1 - Virupakshaiah

**List of documents marked on behalf of the appellants on
I.A.No.1:**

Ex.P.1 - C/c. Order sheet in OS No.20/2012

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- Ex.P.2 - C/c. Amended plaint in OS No.20/2012
- Ex.P.3 - C/c. Written statement of respondents No.1 and 6 in OS No.20/2012
- Ex.P.4 - C/c. Written statement of respondents No.4 and 5 in OS No.20/2012
- Ex.P.5 - C/c. Written statement of respondents No.8 in OS No.20/2012
- Ex.P.6 &7- C/c. Judgment and decree in OS.20/2012
- Ex.P.8 - C/c. Order sheet in FDP No.30/2021
- Ex.P.9 - C/c. Petition in FDP No.30/2021
- Ex.P.10 - C/c. IA in FDP No.30/2021
- Ex.P.11 - C/c. Notice in FDP No.30/2021

List of witnesses examined for the respondents on I.A.No.1:

-Nil-

List of documents marked on behalf of the respondents on I.A.No.1:

- Ex.R.1 - C/c. Petition in RRT CR 17/2012-13.

**VI Addl.District & Sessions Judge
Tumakuru.**