



IN THE COURT OF ADDL. CIVIL JUDGE AND JMFC.,
KUNIGAL

Present:

Sri. MANJUNATH SHIVAPOOJI, B.A., LL.B.,

Addl. Civil Judge & JMFC., Kunigal.

Dated: 18th Day of July, 2026

O.S.NO. 468/2022

Plaintiffs

- : 1. Smt.Manjula
D/o.Hanumanthaiah
W/o.Ravi
Aged about 46 years,
R/o. Gajananapalya,
K.H.Halli post, Amruthuru Hobli,
Kunigal Taluk,
Tumakuru District.
2. Smt.Hema
D/o.Hanumanthaiah
W/o.Shivalingaiah
Aged about 44 years,
R/o. No.7, Ring road,
Rajivgandi nagar, Leggere,
Peenya Industrial Area,
Bengaluru-560058.

[Rep. by Sri.C.R.V Advocate]

V/s



- Defendants** :
1. Sri.Hanumanthaiah
S/o.Late Kappaiah
Aged about 74 years,
 2. Sri.Nanjappa
S/o.Hanumanthaiah
Aged about 48 years,

The defendant No.1 and 2 are
R/o. Handalakauppe village,
Kasaba Hobli, Kunigal Taluk,
Tumakuru District.

3. Sri.Mahadevareddy
S/o.S.Narayanareddy
Aged about 56 years,
R/at. No.55, N.T.I Layout,
Bopasandra Main Road,
2nd stage, R.M.V Badavane,
Bengaluru-560094.

[D-1 & 2 By Sri.H.P.S]

[D-3 Rep. by Sri.H.S.K . Advocate]

Date of Institution of Suit	22.07.2022		
Nature of the Suit	Partition and separate possession		
Date of Commencement of Evidence	30.09.2023		
Date of pronouncement of Judgment	18.07.2026		
Total Duration	Years	Months	Days
	03	11	26

**JUDGEMENT**

The plaintiffs have filed the present suit for the relief of partition and separate possession of their legitimate share in suit schedule property against the defendants.

2. Facts of the case of plaintiffs is as follows:-

The plaintiffs submitted that, the defendant No.1 is the father of plaintiffs and defendant No.2. The defendant No.3 is the alleged agreement holder. The suit schedule property is the ancestral and joint family property of plaintiffs and defendant No.1 and 2. The defendant No.1 had acquired the suit property under the panchayath parikath effected between defendant No.1 and his brother. After the panchayath parikath, the katha of suit property was mutated in favour of defendant No.1 as per MR No.17/1992-93. The plaintiffs and defendant No.1 and 2 are in joint possession over the suit property. Till today there is no partition is effected between plaintiffs and defendant No.1 and 2.



3. The plaintiffs further contended that, to defraud the legitimate share of plaintiffs, the defendant No.1 and 2 have executed the sale agreement dated: 11.03.2019 in favour of defendant No.3. The plaintiffs have approached the defendant No.1 and 2 and requested to allot their legitimate share but the defendant No.1 and 2 have refused to allot the share of plaintiff over the suit property. Hence, the plaintiffs have filed this suit for the relief of partition and separate possession and prayed to allot their legitimate share.

4. Upon the service of summons, defendants No.1 to 3 have not appeared before the court. Hence, they have placed exparte.

5. In order to prove the contentions, the plaintiff No.1 has got examined herself as PW-1 and got marked documents at Ex.P1 to P10.



6. On considering the plaint averments, evidence on record and arguments, the following points would arise for my consideration.

1. Whether the plaintiffs proves that the suit schedule property is the ancestral and joint family property of plaintiffs and defendant No.1 and 2 ?

2. Whether the plaintiffs are entitled to the relief as sought for?

3. What order or decree?

7. My answer to the aforesaid points is 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::

8. Point No.1 and 2 :Since these points are inter connected with each other, they are taken together for the discussion in order to avoid the repetition of the facts and circumstances.

9. It is specific case of the plaintiffs that suit schedule property is the ancestral and joint family property of plaintiffs and defendant No.1 and 2. The PW.1 has produced 10 documents. Ex.P.1 is the G-tree, Ex.P2 to 6 are the RTC's of suit schedule property, Ex.P7 to 10 are the order sheet, plaint, compromise petition and compromise decree in OS No.161/2021. The defendants neither appeared nor cross examined the PW.1.

10. This court has gone through the pleadings and documents placed on record and it appears that, plaintiffs have filed this suit for the relief of partition and separate possession



over the suit schedule property. Further there is no dispute is existed with regard to relationship between plaintiffs and defendant No.1 and 2. The plaintiffs have contended that, the suit schedule property is the ancestral and joint family property of plaintiff and defendant No.1 and 2. The defendant No.1 is the father of plaintiffs and defendant No.2. The defendant No.1 has acquired the suit schedule property under the panchayath parikatha effected between defendant No.1 and his brothers. As per panchyath parikath the katha of suit property was mutated in favoru of defendant No.1 as per MR 17/1992-93. The plaintiffs and defendant No.1 and 2 have constitute Hindu joint family and there is no partition is effected between plaintiffs and defendant No.1 and 2 over the suit property till today.

11. Now this court like to rely upon the judgment of Hon'ble High Court of Karnataka in C.R.P No.121/2021. In the said judgment the Hon'ble High court has held that;



“once a partition is admitted prior to coming to force of the amendment and under the partition, the properties have been allocated to the father, the father would take the property in his own individual capacity, there being a disruption of the joint family property, the property is allocated to defendant No.1 who has taken it has his own separate and/or individual property, it is not for the plaintiff who is a sister of defendant No.2 and 3 and daughter of defendant No.1 to claim any right therein”.

12. Further held that,

“there being admission on the part of the plaintiff that there is a partition, there would no requirement for any further evidence to be led in the matter giving an opportunity to establish her claim U/sec. 6 of the Hindu Succession Act and to hold that in view of the partition, Sec.8 of the Act



would come into operation. The property having been allocated to defendant No.1 and he having sold the property to defendant No.4 it cannot be said that the plaintiff has any right over the property”.

13. This court would like to discuss the case on hand in the light of the above said judgment of Hon'ble High Court of Karnataka and it clears that in the present case on hand the plaintiff has admitted that, the partition was effected between defendant No.1 and his brother in the year 1992 and the property is fallen to the share of defendant No.1. Hence by considering the above said observations of Hon'ble High Court of Karnataka it appears that, when the partition was effected between defendant No.1 and his brother and when the suit property is fallen to the share of defendant No.1 then the suit property became his self acquired property of defendant No.1. The plaintiffs and defendant No.2 have no right to claim share



over the suit property during the life time of defendant No.1 and they have no right to question the arrangements in ordered to dispose the suit property by defendant No.1.

14. Further, this court would like to rely upon ***Uttam V/s Saubhag Sing***. In the said judgment the Hon'ble Supreme Court of India has held that

“ when a partition devolves upon father from the grandfather, the same cannot be ancestral property and the same is self acquired property. Applying the said principle the present case the properties subject matter are not a joint family or ancestral properties”.

15. Now, this court would like to rely upon the judgment of **Madras High Court in P. Hema Malini V/s K.Phalani Malai and others** has held that,

“On coming into force of the amendment to Sec.6 of Hindu Succession by way of central amendment the state amendment cannot be



considered since the central amendment dates back to the state of an enactment. Thus, even on this ground the plaintiff cannot place reliance upon the state amendment”.

16. By considering the above said judgment in this case as per the plaint the partition was effected in the year 1992. The state amendment came into force in the year 1994. As per the said judgment after Central enactment to succession then, the amendment back to the date of enactment. Therefore, the Central enactment prevails over the state amendment. Thus any partition or alienation over effected before 20.12.2004 those transaction would not be questionable.

17. Further, as per the Ex.P7 to 10 it appears that, the defendant No.1 and 2 had executed the sale agreement dated: 11.03.2019 in favour of defendant No.3. The defendant No.3 had filed OS No.161/2021 for the relief of specific performance. In the said suit, the defendants of this suit have compromised.



18. Further, the Supreme court of Indian in ***Banwar sings*** case has held that,

“ once a partition has been occurred and the property has fallen to the share of one of the member of the family, such member of family had the requisite right to transfer the land fallen to the share. In the present case the suit properties were fallen to the share of defendant No.1 in the partition effected between defendant No.1 and his brother in the year 1995 and it is defendant No.1 who has sold the suit properties in favour of defendant No.5 in the year 2001. There is no embargo on the defendant No.1 to sell the property fallen to his share which has been recognized by Apex court in Banwar sing. Hence, on this ground also the claim of plaintiff that she is entitled to a partition is not sustainable. Since it is the properties belongs to defendant No.1 which have been sold”.



19. In the light of judgment of Hon'ble Supreme Court of India this court has gone through the plaint. On perusal of the same, it appears that, the suit property is the self acquired property of defendant No.1. The defendant No.1 has sold the suit property in favour of defendant No.3. The legal heirs of defendant No.1 has no right to question the transaction made by defendant No.1 during the life time of defendant No.1. Therefore, the plaintiffs have no right to file the suit during the life time of defendant No.1 for the relief partition over the suit properties. The plaintiff has no cause of action to file the suit. When the plaintiff has no cause of action to file the suit then the suit is barred by law. Therefore, by considering the above said discussions and by considering the direction and findings of Hon'ble High Court of Karnataka and Supreme court of India,



this court comes to the conclusion that, the plaintiffs have failed to prove that the suit property is the ancestral and joint family property of plaintiffs and defendants and when the plaintiffs have failed to prove their case and contention then they are not entitled for the relief sought for. Accordingly, ***Point No.1 and 2*** are answered in the ***Negative***.

20. Point No.3:- In view of discussions made for Point No.1 and 2, I proceed to pass the following;

::ORDER::

The suit of the plaintiffs is hereby
dismissed.

Draw decree accordingly.

[Dictated to the stenographer directly on computer and then corrected by me and thereafter pronounced in the open court on this the ***18th day of July, 2026***]

Sd/-

[Shri.Manjunath Shivapooji]
Addl. Civil Judge And JMFC.,
Kunigal.



ANNEXURE

List of witnesses examined for the plaintiff :

PW.1 : Manjula

List of documents exhibited for the plaintiff :

Ex.P1 : G-tree

Ex.P2 to 6 : RTC extracts

Ex.P7 to 10 : Order sheet, plaint, compromise petition
and compromise decree in OS No.161/2021.

List of witnesses examined for the defendants :

-----NIL-----

List of documents exhibited for the defendants :

-----NIL-----

Sd/-

[Manjunath Shivapooji]
Addl. Civil Judge And JMFC.,
Kunigal.