



**IN THE COURT OF THE ADDL. SENIOR CIVIL JUDGE &
JMFC, AT SIRA**

PRESENT: **Sri.VINOD KUMAR.M** BAL.,LLB,LLM.,
ADDL. SENIOR CIVIL JUDGE & JMFC
AT SIRA

RA.No.53/2015

Dated this the 20th day June – 2026

Appellant/s

1. Eranna,

S/o late Giddaiah,
Aged about 52 years,
R/at Bramhasandara Village,
Kallambella Hobli,
Sira Taluk.

2. Kariyamma,

W/o Krishnappa,
Aged about 56 years,
R/at P.Gollahalli,
Bellavi Hobli,
Tumakuru Taluk & District.

3. Giriyamma,

D/o late Giddaiah,
Aged about 54 years,
R/at Amanahatti,
Shidlekona Post,
Sira Taluk.

4. Kaduramma,

W/o late Giddaiah,
R/at Bramhasandara Village,
Kallambella Hobli,
Sira Taluk.

..... (BY **Sri.Y.R.B** Adv.)

V/s



1. Krishnappa,

S/o late Giddaiah,
Aged about 54 years,

2. Kaduraiah,

S/o late Giddaiah,
Aged about 47 years,

3. Eramma Dead by LR's on record,

4. Jayanna,

S/o late Giddaiah,
Aged about 59 years,

5. Sannagiddaiah,

S/o late Giddaiah,
Aged about 56 years,

6. Rangamma,

W/o late Krishnappa,
Aged about 65 years,

7. Laxmidevamma,

D/o late Giddaiah,
Aged about 60 years,

All are R/at Bramhasandara Village,
Kallambella Hobli,
Sira Taluk.

(R.1 & 2 **Sri.G.B.R** Adv.)

(R.3 to 5 **Sri.M.S.J** Adv.)



Date and nature of decree appealed against	Judgment and decree passed in O.S.No.05/2011 dated 30.11.2015 by the Prl. Civil Judge and JMFC, Sira.
Date of institution of the appeals	10-12-2015
Date on which the judgment was pronounced.	20-06-2026
Total duration	Year/s : Month/s : day/s
	10 06 10

Sd/-
(VINOD KUMAR. M)
 Addl. Senior Civil Judge &
 JMFC., Sira

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

The present appeal filed by appellant/original defendants No.4 to 7 & 9 against respondents No.1 & 2/original plaintiffs & respondent No.1 to 3 & 8/defendants No.1 to 3 & 8 U/o 41 Rule 1 of CPC challenging the judgment and decree passed in O.S.No.05/2011 dated 03.11.2015 by the Prl. Civil Judge and JMFC, Sira.

On other hand, the respondents No.1 & 2/plaintiffs filed cross appeal/objections U/o 41 Rule 1 of CPC challenging the findings given by the trail court on issue No.1 to 4 in Judgment and Decree passed in O.S.No.05/2011 on dated 03.11.2015.

2. For the sake of convenient and brevity, the parties would be referred to in this judgment as per their ranks before the trail court.

**3. Brief facts of the case leading to appeal are as follows :**

The appellant/original defendants No.4 to 7 & 9 filed this appeal challenging the judgment and decree passed in O.S.No.05/2011 dated 03.11.2015 by the Prl. Civil Judge and JMFC, Sira and set aside the said judgment and decree by allowing the same.

4. The contention of plaintiffs in their plaint before the trial court that, they and defendants No.2 to 4 are children of Giddaiah and defendant No.1 is wife of Giddaiah. The suit property are their ancestral and joint family property. After death of said Giddaiah, they and defendants No.1 to 4 have succeed the suit property. But the defendant No.4 concocted the documents in favor of defendant No.5 without their knowledge and consent. The said created documents does not binds on their shares they demanded with defendants for partition, but the denied the same. On these grounds they prays to decree the suit for partition and separate possession.

5. After service of suit summons, the defendants No.1 to 4 appeared through their counsel and filed written statement by admits the relationship with plaintiffs and defendant No.4 denied the contents of plaint includes relationship with plaintiffs. During the pendency of suit, the defendants No.5 to 9 were impleaded was necessary party and defendants No.5 to 7 & 9 appeared through counsel and filed memo to adopt the written statement of defendant No.4. But the defendant No.8 called out absent and placed exparte.



6. The contention of defendants No.4 before trail court that, the plaintiffs are not sons of Giddaiah. The suit property are not ancestral and joint family property. The defendant No.1 filed Misc.No.44/1973 along with defendants No.2 & 3 against Giddaiah came to be compromised and executed registered partition settlement in favor of Giddaiah. The defendant No.1 was leading immoral life. It is further that, item No.1 of suit property is self acquired property of defendant No.4 and item No.3 was self acquired property of deceased Giddaiah, who sold the same in favor of defendant No.5 under sale deed for family and legal necessity. The defendant No.5 becomes owner in possession and enjoyment of item No.3 of suit property as bonafide purchaser. The suit is barred by law of limitation. The suit is bad for non-joinder of necessary parties and properties. On these ground, the defendant No.4 prays to dismissal the suit.

7. On the basis of rival pleadings, the trail court has framed the following issues as hereunder:

ISSUES

- 1. Whether the plaintiffs prove that, the suit properties are the ancestral and joint family properties of them and they are the member of Hindu Undivided Joint Family?***
- 2. Whether the defendant No.4 proves that the plaintiffs are not the sons of late Giddaiah of Bramhasandra Gollarahatti?***
- 3. Whether the defendant No.4 further proves that, he is the bonafide purchaser of the***



suit schedule properties through the Sale deed dated 28.03.1982?

4. Whether the plaintiffs are entitled for the relief as sought for?

5. What order or decree?

8. After framing of the issues by trial court, the plaintiff examined as PW.1 and got marked as many as 13 documents at Ex.P.1 to 13. On other hand, defendants No.4 & GPA holder of defendant No.5 examined as DW.1 & 2 and got marked as many as 25 documents at Ex.D.1 to 25. Closed the both side evidence before the trial court.

9. Thereafter, the trial court after hearing the arguments and perused the materials available on record to partly decree the suit of the plaintiffs by passing a Judgment and decree on dated 03.11.2015.

10. Being the aggrieved by the impugned judgment and decree passed in O.S.No.05/2011, the defendants No.4 to 7 & 9/appellants preferred an this appeal on the following:-

GROUND

1. The trial court has not framed the issue regarding non-joinder of necessary parties and properties as contended in para No.9 of written statement.

2. The trial court erred in answering the issue No.1 & 4 in the partly Affirmative instead of fully Negative.

3. The trial court has not at all consider the recital in Ex.D.1/Release deed executed



by defendant No.1/respondent No.3 in favor of Giddaiah by relinquish her right over family property.

4. The trial court has not at all consider the oral and documentary evidence produced by defendant No.4/DW.1 and wrongly answered to issues in affirmative instead of negative.

5. This court has to remanded the matter to trial court for fresh disposal or modified by reduce the share of plaintiffs.

11. Hence, on the above among other grounds, the original defendants No.4 to 7 & 9/appellants in appeal prayed before this court to allow appeal and set-aside the impugned judgment and decree in O.S.No.05/2011.

12. In spite of service of notice on the appeal, the respondent No.1 & 2, 4 to 7 appeared through counsel and respondent No.3 died during the pendency of appeal. In the meantime, this court secured the entire record of O.S.No.05/2011 from the trial court. In the meantime, the respondent No.1 & 2 filed cross appeal/objections against Judgment and Decree in respect of findings given by the trial court and issue No.1 to 5.

13. The respondent No.1 & 2 cross appeal/objections contended that, the trial court was partly decreed the suit in respect of item No.2 of suit property and dismissal the suit of item No.1 & 3 of suit property. The trial court failed to appreciate the Ex.D.1 & 2 and only reject the legitimate share in respect of item No.1 & 3 of suit property. It is further that,



the plaintiffs and defendants are joint family members and all are entitle for share of item No.1 & 3 of suit property apart from item No.2 of suit property. On these grounds, they prays to set aside the Judgment and Decree passed in O.S.No.05/2011 and allow the cross appeal/objections.

14. Thereafter, it heard arguments of the counsel for appellants and respondents No.1 & 2. Perused the entire materials available on record of the case. In view of the grounds in the appeal made out by the appellants/defendants No.4 to 7 & 9, the following points arise for my consideration :

P O I N T S

1. Whether judgment and decree passed by the trial court is apposed to law and same is arbitrary, capricious & perverse.?

2. Whether the trail court has erred in not consider the non-inclusion of necessary properties bearing Sy.No.27/1c, measuring 3 guntas belongs to Giddaiah none other than father of appellants and respondent No.1, 2, 4, 5 & 7 as contended in para No.9 of the written statement?

3. Whether the judgment and decree passed by the trail court calls for interference by this court?

4. What order or decree?

15. After scrutiny of the oral and documentary evidence placed on record and after hearing the arguments by both counsel, my findings to the above points are as follows :



- POINT NO.1** : In the **Affirmative**
- POINT NO.2** : In the **Affirmative**
- POINT NO.3** : In the **Affirmative**
- POINT NO.4** : As per final order
for the following :

REASONS

16. POINTS NO.1 to 3 : Since all these points are inter-connected with each other and involved common discussion, they are taken up together for consideration in order to avoid repetition of facts and discussion.

17. The learned counsel for appellants argued that, the relationship between appellants and respondent are not in dispute. The trail court has decreed the suit in part in respect of item No.2 of suit property and dismissal the suit in respect of item No.1 & 3 of suit property. Originally item No.1 of suit property belongs to appellant No.1 acquired under sale deed and it is his self acquired property. But item No.3 of suit property belongs to their father Giddaiah acquired under sale deed. During the lifetime of Giddaiah, he sold the item No.3 of suit property in favor of respondent No.6 under sale deed for valuable sale consideration. The respondent No.6 becomes owner in possession and enjoyment of suit property. The respondents No.1 & 2 have no right over the suit property. It is further argued that, the respondent No.3/Eramma executed release deed herself and respondents No.1 & 2 in favor of Giddaiah by releasing the family properties except Sy.No.27/1 and 20/3 as share. But the trail court has not at all consider



the Ex.D.1/Release deed executed by respondent No.3. Since the plaintiffs never produced any birth certificate, Ration Card to show the children of Giddaiah. No witnesses also examined on behalf of plaintiffs. It is further argued that, the suit is barred by law of limitation and non-inclusion of necessary properties. The trial court has not at all framed the issue on the point of non-inclusion of necessary properties. On these grounds, the counsel for appellants prays to set-aside the judgment and decree with remanded back to trial court to give an opportunity for proceed the case.

18. On other hand the counsel for respondents No.1 & 2 argued that, the appellants admits the relationship with respondents and children of Giddaiah. The admission of appellants need not to be proved U/sec. 58 of Evidence Act. Originally suit property belongs to Giddaiah and acquired the same out of joint family funds in the name of appellant No.1. All the suit properties are joint family in joint possession. But the trial court has wrongly decreed the suit in part instead of fully decreed. With regard to limitation concerned, article 109 and 110 of Limitation act speaks that, any member of the family member shall be excluded in joint family only applies. But the appellants and respondents No.1 to 4, 6 to 9 are in joint family and in joint possession of suit property. The question of limitation does not arise. On these grounds, the counsel prays to allow the cross appeal and dismissal the appeal filed by appellants.



19. I have gone through the records carefully and heard the arguments by counsel for the appellants and respondents in detail. From the record, it can be borne out that the plaintiffs filed this suit before the trial court against defendants for partition and separate possession. It was the case of plaintiffs before the trial court that, they and defendants No.1, 2, 4, 6 to 9 are children of Giddaiah born through first wife Eramma i.e., defendant No.3 and Kaduramma. On other hand, the defendant No.4 disputing the relationship with plaintiffs that, the plaintiffs are not children of Giddaiah. But in the cross-examination of DW.1 categorically admits that plaintiffs and defendants No.1, 2, 4, 6 to 9 are children of Giddaiah. Even though the counsel for appellants and respondents No.1 & 2 argued before this court that, the relationship between appellants and respondents No.1 to 5 & 7 are not in dispute.

20. It is specific contention of appellants before trial court and this court that, the trial court has not at all framed the issue regarding non-inclusion of necessary property bearing Sy.No.27/1c, measuring 3 guntas belongs to Giddaiah as contended in para No.9 of the written statement. Even in the para No.3 of the memorandum of appeal filed by appellants clearly establish that, the trial court did not frame the non-inclusion of necessary property bearing Sy.No.27/1c, measuring 3 guntas belongs to Giddaiah. During the cross-examination of PW.1 nothing posed about non-inclusion of Sy.No.27/1c in the suit apart from item No.1 to 3 of suit property. But para No.9 of the written statement specifically



contended that, the suit is bad for non-joinder of parties and properties.

21. In support of contention the counsel for appellants filed I.A.No.1 U/o 41 Rule 27 of CPC along with documents in respect of Sy.No.27/1c nothing but excluded the property in original suit apart from item No.1 to 3 of suit property. On other hand, the respondents and counsel never explained about non-inclusion of Sy.No.27/1c in original suit nor cross appeal before both courts. The counsel for appellants produced the list of documents along with applications for lead additional evidence i.e., RR and IL & present RTC pertaining to Sy.No.27/1c, measuring 3 guntas. On perusal of RR, IL and RTC of Sy.No.27/1c clearly establish that, originally Sy.No.27/1c belongs to Giddaiah none other than father of appellants and respondents No.1 to 5 & 7 and the RTC of Sy.No.27/1c was standing in the name of Eramma W/o Giddaiah i.e., deceased respondent No.3 acquired under inheritance. The appellants and counsel never produced the documents pertaining to Sy.No.27/1c before trial court for adjudication. But now the appellants produced the same for adjudication in respect of Sy.No.27/1c apart from item No.1 to 3 of suit property.

22. It is prime question arise before this court that, whether the Sy.No.27/1c belongs to Giddaiah would be necessary to inclusion of property in original suit for decide the rights of the appellants and plaintiffs once for all or not?. In this regard, it is



necessary to go through the provision U/o 41 rule 27 of CPC reads as hereunder:

27. Production of additional evidence in Appellate Court.—(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if —

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or 1[(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.

By close reading of the provision clearly reads that, the additional documents may be necessary to pass Judgment. Admittedly, the Sy.No.27/1c has not been included in original suit for adjudication before the trail court apart from item No.1 to 3 of suit property. Even on perusal of documents produced by the appellants along with application U/o 41 rule 27 of CPC pertaining to Sy.No.27/1c clearly establish that, originally Sy.No.27/1c, measuring 3 guntas belongs to Giddaiah, who



died intestate leaving behind appellants and respondents No.1 to 5 & 7 as legal heirs. In order to decide the rights of the parties, it is necessary to incorporate the Sy.No.27/1c for adjudication. It is settled law that, in suit for partition all the parties and properties are necessary for adjudication between the parties in lis. In the absence of all the properties and parties, this court do not touch with the merits of the appeal.

23. In order to prove the contention of appellants, it is necessary to give an opportunity to them for contest the matter before trial court. However, this court has never in position to discuss the finding given by the trial court and arguments address by the both sides except inclusion of Sy.No.27/1c for adjudication. This court do not given any finding on the issues answered by trial court. On other hand, the respondents No.1 & 2 filed cross appeal against findings on issues by the trial court. In view of remanded the matter back to trial court, the respondents No.1 & 2/plaintiffs are at liberty to urge the contention of cross appeal in once again before the trial court. As such, the appellants have made out a good ground in this appeal about inclusion of Sy.No.27/1c for adjudication and decide the rights of the both parties after amended the pleadings with production of documents. It is true that the defendants/appellants are at latches in not specific pleading about non-inclusion of Sy.No.27/1c belongs to Giddaiah and production of documents in the evidence before the court. But they are taken contention along with documents in this appeal but merely for the said reason, he cannot be deprived of taking



the said stands and that the claim of the both parties cannot be believed and accepted blindly. Since the defendants have got a good case on merits, an opportunity is required to be given to them to prove their contention regarding non-inclusion of necessary property bearing Sy.No.27/1c and parties for adjudication by remanding the matter to the trial court. If the same is not done, it would amount to violation of principle of natural justice of 'audi alteram partem'.

24. Therefore, no prejudice would be caused to the plaintiffs by remand of the matter to the trial court because they can very well prove their case and counter the stands taken by the defendants. As such, in order to provide fair opportunity to the defendants by applying the principle of natural justice, the matter is required to be remanded back to the trial court. Therefore, for all the above reasons, I hold that the judgment and decree passed by the trial court is liable to be set-aside and the matter is required to be remanded back to the trial court for fresh disposal under facts and circumstances of the case. Hence, interference of this court is required into the judgment and decree passed by the trial court in order to remand the matter to the trial court for fresh disposal. **Accordingly, I answered to points No.1 to 3 in the AFFIRMATIVE.**

25. POINT NO.4 : For foregoing reasons, I proceed to pass the following :



ORDER

The appeal filed by the appellants/defendants No.4 to 7 & 9 U/o XLI Rule 1 R/w Sec. 96 of C.P.C. is hereby Allowed.

Consequently, the judgment and decree passed in O.S.No.05/2011 on dated 03.11.2015 by the Prl. Civil Judge and JMFC, Sira is hereby SET-ASIDE and the matter is REMANDED BACK to the trial court for fresh disposal.

After remanded the matter, the trial court shall permit the both parties to amend the pleadings in respect of include the Sy.No.27/1c, measuring 3 guntas & necessary parties for adjudication and permit to adduce both side evidence only on that point and thereafter, dispose of the matter afresh in accordance with law.

The appellants/defendants & respondents/plaintiffs shall appear before the trial court on 20.07.2026 without expecting fresh notices from the trial court.

Office is hereby directed to draw decree accordingly.



Office is further directed to return entire records of the original suit along with a copy of this judgment to the trail court.

(Dictated to Stenographer directly on computer, typed by him, corrected by me & then pronounced in open court on this the **20th day of June 2026**)

Sd/-
(VINOD KUMAR. M)
Addl. Senior Civil Judge &
JMFC., Sira