

TITLE SHEET FOR JUDGMENTS IN SUITS

KATK800015012017



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

PRESENT

Smt. ZARIFA BANU A.R.,
B.A.L., LL.M.

PRL. SENIOR CIVIL JUDGE AND JMFC., SIRA

DATED THIS THE 5th DAY OF AUGUST 2026

O.S./137/2017

BETWEEN

1. Jayamma, W/o late Chandranaika,
Aged about 70 years,
R/at Anupanahalli Thanda,
Kasaba hobli, Sira Taluk.

2. Bhagya C.R.,
D/o late Chandranaika,
W/o Nagesh Naika,
Aged about 42 years,
R/at Anupanahalli Thanda,
Kasaba hobli, Sira Taluk.

Plaintiffs

(Rptd: By Sri.H.C.E., Advocate)

AND

Halibai,
W/o late Chandranaika,



Aged about 45 years,
R/at Dadagondanahalli,
Madhugiri Taluk.

Defendant

(Rptd: By Sri.C.M.Adv.,)

Date of institution of the Suit	:	09.11.2017
Nature of the Suit	:	Partition and separate possession
Date of commencement of recording of evidence	:	28.07.2022
Date on which the Judgment was pronounced	:	05.08.2026
Total Duration	:	Year 08 Months 08 Days 26

(ZARIFA BANU A.R.)
Prl. Senior Civil Judge
and JMFC., Sira.

J U D G M E N T

The plaintiffs have filed the present suit against the defendant for partition and separate possession.



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

The land comprised in Sy.No 70/3 and 351 are the ancestral and joint family properties of the plaintiffs and the defendant, the plaintiffs and the defendant are the Hindus by religion and are governed by Mitakshara school of law. That the plaintiffs and the defendant are constitute Hindu Undivided Joint family and they never divided in status and remain joint till today and are in joint possession and enjoyment over the suit properties. The propositus of the parties to the suit by name Ramanaika, said Ramanaika had four sons by name Lakshmanaika, Samyanaika, Sevanaika and Chandranaika, except Lakshmanaika, all other three brothers are died. During the life time of the above said brothers and Lakshmanaika they were divided their joint family properties, in that partition the suit schedule properties were fallen into the share of the deceased Chandranaika. Aforesaid Chandranaika had two wives namely Jayamma



(plaintiff No-1) and Halibai(defendant). That the suit item No.1 stands in the name of the deceased Chandranaika and the suit Item No-2 is stands in the name of the defendant in spite of it the plaintiff and defendant are in joint possession and enjoyment over the suit schedule properties. Aforesaid Chandranaika was died on 17-01-1992 but the defendant has created another death certificate and made believe that the said Chandranaika was died on 10-05-1998 and obtained the khatha of the item No-2 in her name illegally. Without any legal necessity, now the defendant by taking advantage of the documents standing in the name of the defendant is attempting to alienate the suit schedule item No-2 with a designed intention to defraud the plaintiff from her legitimate half share in the suit schedule properties. When the plaintiff came to know the illegal attempt of the transfer of the suit item No-2, the plaintiff has demanded and requested the defendant to come forward for partition the joint family properties, but



the defendant was failed to comply with the demands of the plaintiff and refused to effect the partition of the joint family properties. Hence this suit.

3. On service of summons the defendant appeared through her counsel and has filed the written statement and contended that, the defendant's husband namely Chandranaika has married the defendant about 40 years ago and he has not married the Plaintiff at any point of time. The defendant has two sons namely Mukundha Naika aged about 35 years and Gunda Naika aged about 32 years. During the lifetime of defendant's husband namely Chandranaika and his brothers and their father were Partitioned their ancestral and joint family properties by Registered Partition deed dated 7-12-1990 between them, in that partition the entire suit schedule survey number 70 totally measuring 10-20 acres was fallen to the share of defendant's husband father by name Ramanaika. After the death of said Ramanaika recently for the sake of document the



defendant and her husband's brothers have partitioned their father's share I.e., Sy.No.70 under a registered Partition deed dated 04-08-2011 wherein the defendant is also one of the party to the said registered Partition deed, since her husband was no more, in that partition the item No.2 of the suit schedule property was fallen to the share of the defendant, basing on the registered partitioned deed dated 04-08-2011 the Khatha and phani of the suit schedule property Item No.2 was mutated in the name of the defendant. On the other hand as per the partition took place between the defendant's husband and his brothers and their father by name Ramanaika the suit Item No.1 was mutated in the name of the defendant's husband. Accordingly, the defendant and her sons have been in physical possession and enjoyment of the suit schedule properties without any interruption. The defendant and her sons have planted Coconut trees in suit schedule Item No.2. Therefore, the Plaintiff has no manner of right, title,



interest or possession over the suit schedule properties. The defendant's husband elder brother by name Savya naika has a son by name Venkateshanaika, the said venkateshanaika has developed hostile attitude against the defendant and her children due to family matters, under the said enmity the said Venkateshnaika has provoked the Plaintiff who is unknown to the defendant family has filed this false, frivolous and vexatious suit with intent to give trouble and harassment to the Poor defendant. On the other hand after filing of the instant suit the defendant came to know that the Plaintiff is permanent resident of Dhadhagondanahalli village of Madhugiri taluk and at any point of time the Plaintiff has not resided in the address as given in the cause title of the suit. The suit of the plaintiff is basing on false, frivolous and vexatious on these grounds and such others prays to dismiss the suit.



4. Further the defendant also filed additional written statement and contended that, the age of the Second plaintiff as described in the Cause Title is false and the relationship of Second Plaintiff with Chandranaika (i.e., husband of defendant) is hereby denied by this defendant as false but the Plaintiffs have intentionally mentioned wrong age and as daughter of late Chandranaika with intent to file this suit by wrong claim. The defendant has two sons namely Mukundha Naika aged about 35 years and Gunda Naika aged about 32 years through late Chandranaika and both are having right, title, interest or possession over the suit schedule properties as co-parceners, hence they are proper and necessary parties to this suit, but the Plaintiffs have not made them as parties to this suit, hence the suit of the Plaintiffs is not maintainable for non-joinder of necessary parties. Hence, prays to dismiss the suit.



5. On the basis of the above pleadings, the learned predecessor of this court has framed the following:

ISSUES

1. Whether the plaintiff proves that she is the legally wedded wife of Chandranaika?
2. Whether the plaintiff proves that, suit properties are her joint family properties?
3. Whether the plaintiff is entitled to the relief of partition and separate possession as prayed?
4. What Order or Decree?

Addl. Issue

1. Whether the suit is bad for non-joinder of necessary party?

6. In order to substantiate their case, the plaintiff No.1 examined herself as P.W.1 and got marked Exhibit P1 to 11 documents. On the other hand, the defendant examined herself as DW1 and got marked Exhibit D1 to D9 and closed their side evidence.



7. Heard arguments of both side and perused materials on record.

8. The findings to the above issues are as follows;

Issue No.1 to 3 :- In the Affirmative,

Addl.Issue No.1 :- In the Negative,

Issue No.4 :- As per final order
for the following;

REASONS

9. **Issue No.1 to 3**:- Since these issues are interconnected each other, to avoid repetition these are taken together for consideration.

10. In order prove their case, the plaintiff No.1 examined herself as PW-1 and got produced EX.P-1 to 11 documents. Ex.P1 & 2 are the G.Tree affidavit and certificate, Ex.P.3 is the G.Tree, Ex.P.4 & 5 are the RTC extracts, Ex.P.6 is the Adhar card, Ex.P.7 is the will, Ex.P.8 is the Will dated:03.05.1994, Ex.P.9 is the School



certificate, Ex.P.10 is the death certificate and Ex.P.11 is the affidavit.

11. On the other hand, defendant examined himself as DW-1 and got produced Ex.D-1 and D.9 documents. Ex.D.1/G.Tree certificate, Ex.D.2/Certified copy of Registered family partition deed, Ex.D.3/Mutation register extract, Ex.D.4/Mutation register extracts, Ex.D.5 to 8/RTC extracts and Ex.D.9/Adhar card.

12. From the oral as well as documentary evidence, it is undisputed fact that Chandranaika and his brothers were Partitioned their ancestral and joint family properties. Wherein Sy. No.351 measuring 5 acre 1 guntas (item No.1) fallen to the share of Chandranaika vide MR No.17/1990-91 which was marked at the instances as Ex.D-3. The khata and pahani got mutated in the name of Chadranaika as per Ex.P-4 and Ex.D-8. Further as per Ex.D-2 partition deed dated 04.08.2011 Item No.2 property fallen to the share of Chandranaika since deceased his wife the defendant Halibai under partition held



between the brothers of Chandra Naika. The khata and pahani got mutated in the name of the defendant as per Ex.P-5 and Ex.D-3 and 5. The said fact is undisputed.

13. The plaintiff No.1 claimed that she is the first wife and the defendant is the second wife of said deceased Chandra Naika and the plaintiff No.1 being the wife has share in the property of her deceased husband. However, the defendant denied the relationship and the marriage of the plaintiff No.1 and the deceased Chandra Naika. The only question to be considered here is as to whether the plaintiff No.1 is the legally wedded wife of the deceased Chandra Naika and she is entitled to the share in his property. The plaintiff No.1 to prove that she is wife of deceased Chandra Naika she has produced Adhar card/Ex.P-6, registered Will executed by her father/Ex.P-8, the school certificate of her daughter plaintiff No.2 herein/Ex.P-9 and Affidavit dated 21.11.1992 filed to obtained loan under SC & ST



scheme/Ex.P-11. The defendant also produced her Adhar card/Ex.D-9. In both Adhar cards the Husband name of plaintiff No.1 and the defendant shown as Chandra Naika. The defendant specifically denied the age address of the plaintiff No.1. In Ex.P-6 the date of birth of the plaintiff No.1 shown as 01.01.1971 and in Ex.D-9 the date of birth of defendant shown as 01.01.1965. However, as it is well settled law that the Adhar cards are not the documents of age proofs. Though the defendant denied the age of the plaintiff No.1 to the contrary to Ex.P-6, she has not produced any documents so far as address of the plaintiff No.1 is concerned the PW-1 clearly deposed that after death of her husband she used to reside in her matrimonial house in the address given in cause title, as aforesaid to the contrary the defendant has not produced any iota of documents. The plaintiff No.1 and the defendant have not produced any cogent evidence to show their exact age, as such the in the absence of cogent evidence the contention of defendant cannot be accepted.



14. Furthermore, the plaintiff No.1 has produced Death certificate of Chandra Naika/Ex.P-7 which goes to show that he was died on 17.01.1992, registered Will executed by her father/Ex.P-8 goes to show that the father of the plaintiffs executed registered Will in the name of the plaintiff No.1 and her sister on 03.05.1994 wherein it is clearly elicited that the plaintiff No.1 is the widow of Chandra Naika and she resided in her matrimonial house after the death of her husband. The recital of Ex.P-8 reproduced here as it is for brevity "ಸನ್ ಒಂದು ಸಾವಿರದ ಒಂಭೈನೂರ ತೊಂಬತ್ತ ನಾಲ್ಕನೇ ಇಸವಿಯ ಮೇ ಮಾಹೆ ದಿನಾಂಕ ಮೂರರಲ್ಲೂ ಮಧುಗಿರಿ ತಾಲ್ಲೂಕು ಐ.ಡಿ.ಹಳ್ಳಿ ಹೋಬಳಿ ದಾದಗೊಂಡನಹಳ್ಳಿ ಗ್ರಾಮದಲ್ಲಿರುವ ಲಂಬಾಣಿಗರ ಜನಾಂಗದ ಜಿರಾಯ್ತಿ ಕಸುಬಿನ ಲೇಟ್ ಭೀಮಾನಾಯ್ಕನ ಮಗ ಸುಮಾರು 60 ವರ್ಷ ವಯಸ್ಸುಳ್ಳ ಪಕೀರನಾಯ್ಕ ಆದ ನಾನು ಬರೆಸಿಟ್ಟು ವಿಲ್ ಮರಣಶಾಸನ ಏನೆಂದರೆ ನನಗೆ ದೇಹಸ್ಥಿತಿ ದಿನೇ ದಿನೇ ಕುಂದುತ್ತಾ ಇದ್ದು ಏನೊಂದು ಕೆಲಸ ಕಾರ್ಯಗಳು ಮಾಡಲು ಸಾಧ್ಯವಾಗುತ್ತಿಲ್ಲ ಮತ್ತು ನನ್ನ ಹೆಂಡತಿ ಪುಟ್ಟಮ್ಮನಿಗೂ ಸಹಾ ವಯಸ್ಸಾಗಿದ್ದು ಆಕೆಗೂ ಸಹಾ ಏನೊಂದು ಕೆಲಸ ಮಾಡಲು ಸಹಾ ಸಾಧ್ಯವಾಗುವುದಿಲ್ಲ. ನನಗೆ ಗಂಡು ಮಕ್ಕಳು ಇರುವುದಿಲ್ಲ. ಇಬ್ಬರೂ ಹೆಣ್ಣು ಮಕ್ಕಳು ಇದ್ದು ಒಂದನೇ ಮಗಳು ಜಯಮ್ಮ ಮತ್ತು ಎರಡನೇ ಮಗಳು ಲಕ್ಷ್ಮಮ್ಮ ಈ ರೀತಿ ಇಬ್ಬರೂ ಹೆಣ್ಣು ಮಕ್ಕಳು ಇದ್ದು ಒಂದನೇ ಮಗಳು ಜಯಮ್ಮನನ್ನು ಶಿರಾ ತಾಲ್ಲೂಕು ಹನುಪನಹಳ್ಳಿ ತಾಂಡಕ್ಕೆ ಕೊಟ್ಟು ಲಗ್ನ ಮಾಡಿರುತ್ತೇನೆ. ಆದರೆ ಜಯಮ್ಮನ ಗಂಡ



ಚಂದ್ರನಾಯ್ಕ ಪವತಿಯಾಗಿದ್ದು ಸದರಿ ಜಯಮ್ಮನು ಈಗ ಹಾಲಿ ನನ್ನ ಮನೆಯಲ್ಲಿಯೇ ಇರುತ್ತಾಳೆ". The school certificate/Ex.P-9 of her daughter plaintiff No.2 herein goes to show the father name of the plaintiff No.2 as Chandra Naika and Affidavit dated 21.11.1992 filed to obtained loan under SC & ST scheme/Ex.P-11 goes to show that the plaintiff No.1 affirms the date of death of Chandra Naika and claimed widow loan under SC & ST Scheme. The defendant has not disputed the said documents. No rebuttable evidence produced by the defendant to discarded the presumption of genuinity of the said documents. Thus, the Said documents clearly goes to show that the plaintiff No.1 is the Wife and the plaintiff No.2 is the daughter of deceased Chandra Naika. As aforesaid the suit schedule properties belong to deceased Chandra Naika the plaintiffs are entitled to share along with defendant. Thus, for all these reasons from the oral as well as documentary evidence the plaintiffs established with preponderance of probabilities that the plaintiff No.1 is the legally wedded wife of the deceased Chandra Naika and the properties are her joint family



property and she is entitled to the share therein. Thus, the plaintiff No.1 & 2 are jointly entitled for $\frac{1}{2}$ (half) share in the suit schedule properties. The defendant is entitled for $\frac{1}{2}$ (half) share in the suit schedule properties. **Thus, for all these reasons issue No.1 to 3 answered in the Affirmative.**

15. Addl Issue No.1:- The defendant taken as specific plea in her additional written statement that the defendant having two sons and they are the co-parceners to the suit schedule properties and they being not parties to the suit, suit is bad for non-joinder of necessary parties. As per G.Tree the defendant having Mukunda Naika and Gunda Naika. However, since the deceased Chandra Naika have two wives and no documents produced either by the plaintiff No.1 or the defendant to prove their marriage as to who has married first and second to the deceased Charndra Naika, the sons of defendant entitled their share in the share allotted to their mother the defendant herein. Thus, this court is



of the considered view that the sons of the defendant are not necessary party to the suit. Thus, for all these reasons Addl issue No.1 answered in the Negative.

16. Point No.4:- In the light of above reasons and findings, I proceed to pass the following:

ORDER

The suit of the plaintiffs is hereby decreed with cost.

The plaintiff No.1 & 2 are jointly entitled for $\frac{1}{2}$ (half) share in the suit schedule properties.

The defendant is entitled for $\frac{1}{2}$ (half) share in the suit schedule properties subjected to court fee.



Draw preliminary decree
accordingly.

(Dictated to the Stenographer, typed by her directly
on the computer, corrected by me and then pronounced in
the open court on this the 5th day of August 2026)

(ZARIFA BANU A.R.)
Prl. Senior Civil Judge
& JMFC., Sira.

A N N E X U R E

**List of witnesses examined on behalf of
plaintiffs:**

PW.1 Jayamma

**List of documents exhibited on behalf of
plaintiffs:**

Ex.P1 & 2	G.Tree affidavit and certificate
Ex.P3	G.Tree
Ex.P4 & 5	RTC extracts.
Ex.P6	Adhar card.
Ex.P7	Death certificate
Ex.P8	Will date:03.05.1994
Ex.P9	School certificate
Ex.P10	Death certificate
Ex.P11	Plaintiff's Affidavit



List of witnesses examined on behalf of defendants:

DW-1 - Halibai

List of documents exhibited on behalf of defendants:

Ex.D1	G.Tree certificate
Ex.D2	Certified copy of registered partition deed
Ex.D3 & 4	Mutation register extracts
Ex.D5 to 8	RTC extracts
Ex.D9	Adhar card.

(ZARIFA BANU A.R.)
Prl. Senior Civil Judge
& JMFC., Sira.