**IN THE COURT OF THE PRINCIPAL CIVIL JUDGE & JMFC,**

**AT TIPTUR.**

**PRESENT**

**SRI. BHARATH CHANDRA K. S. B.A.LL.B,**
**PRL. CIVIL JUDGE & JMFC,**
**TIPTUR.**

**Dated this th 15th day of June, 2026**

**O.S. No.383/2012**

**Plaintiff:** Lakshmamma D/o Late Siddaiah,
W/o Chikkanna,
Aged about 58 years,
R/o Lingadahally village,
Kasaba hobli,
Tiptur taluk.

**(R/ by Sri.KSRI Advocate)**

**Vs.**

**Defendants:** Siddagangamma Dead by Lrs:

**a)** Jayalakshmi W/o Late Gangadharaiah,
Aged about 52 years,

**b)** Kirankumar @ Swamy
S/o Late Gangadharaiah,
Aged about 32 years,

**c)** Manjunatha
S/o Late Gangadharaiah,

Aged about 30 years,

all are residing at Kallegowdanapalya,

Tiptur taluk.

**d)** Shivaiah

S/o Late Rangappa and Siddagangamma,

Aged about 52 years,

R/o Goragondanahally,

Kasaba Hobli, Tiptur taluk.

**(R/ by Sri.SS Advocate)**

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| 1. | Date of presentation of the suit | : 28.09.2012 |
| 2. | Nature of the suit | : Partition & separate possession |
| 3. | Evidence commenced on | : 01.08.2025 |
| 4. | Evidence closed on | : 29.11.2025 |
| 5. | Judgment pronounced on | : 15.06.2026 |
| 6. | Duration of the suit | : Year/s 13 Month/s 08 Day/s 18 |

**Sd/-**

**(Bharath Chandra K.S)**

**Prl. Civil Judge and JMFC.**

**Tiptur.**

## J U D G E M E N T

The Plaintiff has filed the present suit against the defendants seeking partition and separate possession of her share by metes and bounds, along with mesne profits and costs.

**2. Description of the Property:-**

**SCHEDULE**

**1)** Land bearing Sy.No.137, Situated at Ramashettyhally village, Kasaba Hobli, Tiptur taluk, measuring 1 acre bounded by:-

East: Land of Hosamane Shivananjappa

West: Land of Ganeshappa

South: Land of Ramaiah

North: Land of Mahalingappa

**2)** Mangalore tiled house and also a vacant space situated at Kallegowdanapalya, Huchagondanahally Grama Panchayath, Kasaba Hobli, Tiptur taluk bearing Sl.No.118 and Property No's 228 and 207 measuring approximately east-west 40 feet and north-south 35 feet bounded by:-

East: Galli and House of Ramaiah

West: Galli and House of Ningappa

South: Road

North: Road

**3. The brief facts of the case of plaintiff is as follows:**

**3.1** The case of the plaintiff is that one Siddappa alias Siddhaiah was the husband of Gowramma and out of their wedlock, they had two daughters, namely the plaintiff and the defendant. It is contended that Gauramma pre-deceased Siddappa and subsequently Siddappa also died leaving behind the plaintiff and defendant as his only legal heirs.

**3.2** It is further contended that the suit schedule properties are the ancestral properties of Siddappa and after his death, the plaintiff and defendant are in joint possession and enjoyment of the said properties. The plaintiff has further contended that during his lifetime, on 30.03.1999, Siddappa executed a registered Will bequeathing the property bearing Survey No.147 measuring 1 acre 37 guntas in favour of the plaintiff and accordingly, the revenue records were mutated in the name of the plaintiff. Further that the said property was granted in favour of Siddappa and was his self-acquired property.

**3.3** It is further contended that after the death of Siddappa on 26.02.2000, differences arose between the plaintiff and defendant, and when the plaintiff demanded partition and separate possession of her share in the suit schedule properties, the defendant refused to effect partition. Hence, the plaintiff has filed the present suit seeking partition and separate possession.

**4. Issuance of Process:** Upon the institution of the suit, this court issued summons to the Defendant, which was duly served. In response to the summons, the Defendant appeared before this court through her advocate and submitted her written statement contesting the plaintiff's case. However during the pendency of the suit the Defendant died and her legal heirs were brought on record.

**5. <u>Brief facts as averred in the written statement of Defendant is as follows :</u>**

**5.1** The defendant, in her written statement, while admitting the relationship between the parties, has denied the all the other averments made in the plaint. It is contended that the suit schedule properties were the self-acquired properties of Siddappa, the father of the plaintiff and defendant, and were not ancestral properties as alleged by the plaintiff.

**5.2** The defendant has contended that during his lifetime, Siddappa executed a registered gift deed dated 04.04.1975 in respect of suit item No.1 schedule property in favour of the defendant and her son Shivanna, who is arrayed as defendant No.1(d). It is stated that ever since the execution of the said gift deed, the defendant and her son have been in possession and enjoyment of suit item No.1 as absolute owners.

**5.3** It is further contended that on 30.08.1990, Siddappa executed a registered Will bequeathing suit item No.2 schedule property in favour of the defendant. After the death of Siddappa in the year 2000, the defendant became the absolute owner of suit item No.2 and the revenue records have also been mutated in her name. Therefore, the defendant has contended that the plaintiff has no right, title or interest over the suit schedule properties and sought for dismissal of the suit.

**6.** Upon perusal of the Plaint and written statement, this court has framed issues following issues : -

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| **ISSUE No.1** | **:** | Whether the plaintiff proves that she and the defendant constitute undivided Hindu joint family and the suit properties are ancestral properties? |
| **ISSUE No.2** | **:** | Whether the plaintiff proves is entitled for 1/2 share in the suit properties by metes and bounds? |

**ISSUE No.3** : Whether the plaintiff is entitled for the relief claimed?

**ISSUE No.4** : Whether the suit is bad for non-joinder of necessary parties?

**ISSUE No.5** : What order or decree?

**7. Plaintiff evidence:** In order to prove their case, the plaintiff examined himself as PW-1 by filing an affidavit in lieu of examination-in-chief and got marked 4 documents as Ex.P-1 to 4, which are as follows:-

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| **EX. P-1** | Is the Special Power of Attorney dated 24.06.2025, executed by the Plaintiff in favour of her son. |
| **EX. P-2** | Is the notarised family tree. |
| **EX. P-3** | Is the RTC of the property bearing Sy.147, wherein at cloumn No.9 the name of the Plaintiff is mentioned. The column No.10 discloses the name to be entered on the basis of a will vide MR.No.24/1999-2000. |
| **EX. P-4** | Is the tax demand register pertaining to the suit Item No.2 schedule property. |

**8. Defendant evidence** : In order to disprove the case of the Plaintiff, Defendant No.1(b) examined himself as Dw-1 and got marked 2 documents as Ex.D-1 and 2, which are as follows:-

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| **EX. D-1** | Is the original registered gift deed dated 04.04.1975 |

| | |
|---|---|
| | executed by Siddappa in favour of the original Defendant and Defendant No.1(b), pertaining to the suit Item No.1 schedule property. |
| **Ex.D-2** | Is the original registered will deed dated 30.08.1990 executed by Siddappa in favour of the original Defendant bequeathing the suit Item No.2 schedule property. |

**9**. Heard the arguments of the counsels on behalf of the Plaintiff and the Defendants.

**10.** Upon careful examination of all the materials on record, including the plaint, written statement, and the oral and documentary evidence provided by the plaintiff, the findings of this court on the aforementioned issues are as follows :

**Issue No.1** : In the **Partly Affirmative.**

**Issue No.2** : In the **Negative.**

**Issue No.3** : In the **Negative.**

**Issue No.4** : In the **Negative.**

**Issue No.5** : **As per final order.**

**for the following:**

**R E A S O N S**

**11.** **ISSUE No.1 and 4 :** As these issues are interconnected with each other and since the same evidence is lead on both these issues, this court has taken them together for common discussion to avoid repetition and for the sake of brevity. Having already outlined the plaint and written statement at the outset of this judgment, the court will now proceed to assess the evidence on record without restating those details, in the interest of brevity.

**12.** At the outset, there is no dispute with regard to the relationship between the parties. It is not in dispute that the plaintiff and defendant are the daughters of Siddappa. It is also not in dispute that Siddappa died on 26.02.2000 leaving behind the plaintiff and defendant as his only legal heirs.

**13.** The main controversy involved in the present suit is with regard to the nature and character of the suit schedule properties. According to the plaintiff, the suit schedule properties are the ancestral properties of Siddappa, the father of the plaintiff and defendant, and therefore, the plaintiff and defendant are entitled for equal share in the same. On the other hand, the defendant has contended that the suit schedule properties were the self-acquired properties of Siddappa and that during his lifetime, he had executed a registered gift deed in respect of suit item No.1 schedule property and a registered Will in respect of suit item No.2 schedule property in favour of the defendant, thereby making the defendant the absolute owner of the said properties.

**14.** In view of the specific defence taken by the defendant disputing the nature of the suit schedule properties, the initial burden lies upon the plaintiff to establish that the suit schedule properties were ancestral properties of Siddappa and that the plaintiff and defendant had a right by birth over the same.

**15.** The GPA holder of the plaintiff was examined before this Court as PW1 by filing an affidavit in lieu of examination-in-chief, wherein the averments made in the plaint were reiterated. The plaintiff has got marked four documents as Ex.P1 to Ex.P4.

**16.** Ex.P1 is the General Power of Attorney executed by the plaintiff in favour of her son, who was examined as PW1. Ex.P2 is the RTC extract pertaining to Survey No.147. However, the said property is not the subject matter of the present suit. In the said RTC extract, Column No.9 reflects the name of the plaintiff and Column No.10 discloses that her name was entered on the basis of a Will under Mutation Register No.24/1999-2000. Ex.P4 is the Tax Demand Register extract pertaining to suit item No.2 schedule property, wherein the name of the defendant is shown as the owner of the said property.

**17.** Except producing the above documents, the plaintiff has not produced any other documentary evidence to establish the nature of the suit schedule properties. More particularly, the plaintiff has not produced any documents pertaining to suit item No.1 schedule property, not even the present RTC extract. Admittedly, the revenue records pertaining to the suit properties are standing in the name of the defendant. In the absence of any documentary evidence produced by the plaintiff to establish that the suit schedule properties were ancestral properties of Siddappa, it cannot be held that the suit schedule properties were ancestral properties of Siddappa or that the plaintiff and defendant had any right therein by birth.

**18.** During the pendency of the suit, the original defendant died and her legal representatives were brought on record. One of the legal representatives of the defendant, namely defendant No.1(B), examined himself as DW1 by filing an affidavit in lieu of examination-in-chief and reiterated the defence taken in the written statement. The defendants have got marked two documents as Ex.D1 and Ex.D2.

**19.** Ex.D1 is the original registered gift deed dated 04.04.1975 executed by Siddappa, the father of the plaintiff and defendant, in favour of the defendant and her son Shivanna in respect of suit item No.1 schedule property. The said gift deed is a registered document executed before the Sub-Registrar, Tiptur.

**20.** A registered document carries a presumption of genuineness and sanctity unless the same is specifically challenged and disproved. In the present case, the gift deed was executed in the year 1975 and Siddappa, the donor, continued to be alive for about 25 years thereafter and died only in the year 2000. During his lifetime, he did not raise any objection or dispute regarding the execution of the said gift deed.

**21.** Further, there are no pleadings in the plaint nor any contention taken by the plaintiff alleging that the said gift deed was concocted, fabricated, or obtained by exercising coercion, fraud or undue influence upon Siddappa. The plaintiff has also not produced any material evidence to disprove the execution or validity of the said registered gift deed.

**22.** Though neither party has produced the revenue records pertaining to suit item No.1 schedule property to show the exact date of mutation, in view of the registered gift deed and the subsequent conduct of the parties, it can reasonably be presumed that the mutation was effected in favour of the defendant after execution of the gift deed. Therefore, upon considering the registered gift deed produced at Ex.D1, this Court is of the opinion that Siddappa had executed the said gift deed in favour of the defendant and her son with respect to suit item No.1 schedule property. Consequently, the defendant has acquired absolute right and title over suit item No.1 schedule property.

**23.** Now coming to suit item No.2 schedule property, the defendant contends that Siddappa had executed a registered Will dated 30.08.1990 bequeathing the said property in her favour. The defendant has produced the original registered Will before this Court and the same is marked as Ex.D2.

**24.** However, mere production of a registered Will is not sufficient to prove the execution and genuineness of the same. Section 68 of the Indian Evidence Act requires that a document which is required by law to be attested must be proved by examining at least one attesting witness. Though the proviso to Section 68 provides an exception in respect of certain registered documents, such exception does not apply to a Will. A Will, even if registered, is required to be proved in accordance with Section 68 of the Indian Evidence Act.

**25.** In the present case, the defendant has not examined any of the attesting witnesses to the Will. In the absence of examination of an attesting witness, the Will produced at Ex.D2 remains unproved and cannot be acted upon by this Court.

**26.** Therefore, it is not necessary for this Court to decide whether suit item No.2 schedule property was the ancestral property or the self-acquired property of Siddappa. The admitted position is that Siddappa died in the year 2000 leaving behind the plaintiff and defendant as his only legal heirs. Upon his death, succession opened and the plaintiff and defendant became Class-I heirs under the Hindu Succession Act, 1956.

**27.** In the absence of proof of the alleged Will said to have been executed by Siddappa in respect of suit item No.2 schedule property, both the plaintiff and defendant are entitled to succeed to the said property equally as Class-I legal heirs under Section 8 of the Hindu Succession Act, 1956. Since it is not the case of the defendant that the suit schedule properties are the ancestral properties of their father, the question of non joinder of the brothers and sisters of their father does not arise for consideration. Accordingly, this court answers **Issue No.1** in the **Partly Affirmative** and **Issue No.4** in the **Negative**.

**28. ISSUE No.2** : With regard to the question as to whether the plaintiff is entitled for the relief of partition and separate possession of half share in the suit schedule properties, as already discussed while answering the previous issues, the plaintiff has failed to establish that suit item No.1 schedule property was the joint family property or ancestral property of the plaintiff and defendant. The plaintiff has not produced any material evidence to prove that she had any right by birth over suit item No.1 schedule property. Therefore, the plaintiff is not entitled to claim any share in respect of suit item No.1 schedule property.

**29.** However, admittedly, there has been no partition effected between the plaintiff and defendant. Therefore, they continue to constitute a Hindu Undivided Family. Further, as already held while answering the previous issue, the alleged Will executed by Siddappa in favour of the defendant with respect to suit item No.2 schedule property has remained unproved. Consequently, upon the death of Siddappa, the plaintiff and defendant being the only Class-I legal heirs are entitled to succeed to suit item No.2 schedule property equally. Hence, the plaintiff is entitled for a share in respect of suit item No.2 schedule property.

**30.** Nevertheless, the pleadings of the plaintiff themselves disclose that there exists another property bearing Survey No.147 measuring 1 acre 37 guntas situated at Ramashettyhalli Village, which according to the plaintiff was the self-acquired property of Siddappa and was bequeathed in favour of the plaintiff under a registered Will dated 30.03.1999.

**31.** When the plaintiff seeks partition with respect to all the properties left behind by Siddappa, it was incumbent upon her to prove the alleged Will dated 30.03.1999, under which she claims exclusive right over the said property, and thereby exclude the said property from partition. However, the plaintiff has not produced the alleged Will before this Court and has also failed to prove the same in accordance with law.

**32.** The plaintiff has only produced the RTC extract pertaining to Survey No.147, which reflects her name and indicates that the mutation was effected on the basis of the said Will. However, mere production of a revenue document showing mutation of the plaintiff's name is not sufficient to establish the execution and genuineness of the Will. The said Will being a document requiring compulsory attestation, was required to be proved in accordance with Section 68 of the Indian Evidence Act.

**33.** Since the alleged Will dated 30.03.1999 has remained unproved, the plaintiff cannot claim exclusive right over the property bearing Survey No.147 measuring 1 acre 37 guntas situated at Ramashettyhalli Village and exclude the same from the scope of partition. In the absence of inclusion of the said property, the suit filed by the plaintiff is bad for partial partition.

**34.**Therefore, though the plaintiff has established her entitlement to a share in respect of suit item No.2 schedule property, in view of the suit being bad for partial partition, she is not entitled for the relief sought in the present suit. Accordingly, the plaintiff is not entitled for the relief of partition and separate possession as claimed. Further in a suit for partition, the question of mesne profits does not arise, since there is no possession which is unlawful. Hence, the suit deserves to be dismissed. Accordingly this court answers **Issue No.2 and 3** is answered in the **Negative**.

**35.** **ISSUE No.5**: In view of the findings of this court on Issue No.1 to 4, this court proceeds to pass the following;

**O R D E R**

The suit of the plaintiff is hereby dismissed with costs.

*Draw decree accordingly.*

*[Dictated to the stenographer directly on computer, typed by her, corrected and then pronounced by me in the open court on this day of 15th day of June 2026]*

**Sd/-**
**(Bharath Chandra K .S)**
**Prl Civil Judge and JMFC.**
**Tiptur**

## ANNEXURES

**Witnesses examined on behalf of plaintiff :**

**PW-1** : Gangadharaiah

**List of documents exhibited for the plaintiff :**

**Ex:P1** : Special Power of Attorney

**Ex:P2** : Notarised family tree

**Ex:P3** : RTC

**Ex:P4** : Tax demand register

**Witnesses examined on behalf of defendant:**

**DW-1** : Kiran Kumar

**Documents marked on behalf of defendant:**

**Ex:D1** : Registered gift deed dated 04.04.1975

**Ex:D2** : Registered will deed dated 30.08.1990

**Sd/-**
**(Bharath Chandra K .S)**
**Prl. Civil Judge and JMFC.**
**Tiptur**