



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 11th day of August, 2026

O.S. No.147/2015

- Plaintiff:**
- 1.** N.Sadashivaiah S/o Siddappa,
Aged about 38 years,
 - 2.** Rajashekaraiah S/o Siddappa,
Aged about 33 years,
Both are residents of Nagaraghatta village,
Nonavinakere hobli,
Tiptur taluk.
 - 3.** B.S.Vanitha W/o M.Umesh,
Aged about 36 years,
R/o Madenur village,
Kasaba hobli,
Tiptur taluk.

(R/ by Sri.MCN Advocate)

Vs.



Defendants: 1. Lakshmamma Dead by Lrs,

1(a) Prema W/o Chandrashekar,

Aged about 50 years,

R/o Karehalli village,

Kasaba Hobli,

Chikkanayakanahalli Taluk.

1(b) Akkamahadevi W/o Siddaiah,

Aged about 55 years,

R/o S.Lakkihalli, Kasaba Hobli,

Tiptur taluk.

1(c) Shankaramma W/o Praash,

Aged about 54 years,

R/o Aralikere village,

Kasaba Hobli, Turuvekere taluk.

2. Gangadharappa S/o Shankarappa,

Aged about 72 years,

R/o Nagaraghatta village,

Nonavinakere Hobli,

Tiptur taluk,

Dead by Lrs



D2(a) Kumaraswamy S/o Gangadharappa,
Aged about 49 years,

D2(b) Mahadevaiah S/o Gangadharappa,
Aged about 45 years,
Both are R/o Belagarahalli village,
Nonavinakere Hobli,
Tiptur taluk.

D2(c) Jagadamba W/o Dayananda,
D/o Gangadharappa,
Aged about 43 years,
R/o Gadabanahalli village,
Kibbanahalli Hobli,
Tiptur taluk.

D2(d) Renukamma W/o Nijaguna,
D/o Gangadharappa,
Aged about 40 years,
R/o Uppinahalli village,
Kibbanahalli Hobli,
Tiptur taluk.

D2(e) Neelamma W/o Late Gangadharappa,
Aged about 69 years,



R/o Belagarahalli village,
Kibbanahalli Hobli,
Tiptur taluk.

- 3.** Siddappa S/o Shankarappa,
Aged about 71 years,
R/o Belagarahalli village,
Kibbanahalli Hobli,
Tiptur taluk.

- 4** Parvathamma Dead by Lrs,

- D4(a)** Ambika W/o Prabhuswamy,
Aged about 46 years,
R/o Thandaga village,
Dabbeghatta Hobli,
Turuvekere taluk.

- D4(b)** Nirmala W/o Jayadeva,
Aged about 40 years,
R/o Lekkenahalli village,
Chikkanayakanahalli taluk.

- D4(c)** Muniraju S/o Bhyranna,
Aged about 37 years,
R/o Thandaga village,



Dabbeghatta Hobli,
Turuvekere taluk.

D4(d) Roopa W/o Suresh,
Aged about 34 years,
R/o Lakkasandra village,
Turuvekere taluk.

5. Puttathayamma W/o Mahalingappa,
Aged about 64 years,
R/o Nagaraghatta village,
Nonavinakere Hobli,
Tiptur taluk.

6. Jayamma W/o Siddappa,
Aged about 60 years,
R/o Dabbeghatta village and hobli
Chikkanayakanahalli taluk.

7. Nawab Jan .M. S/o Mehaboob Sab,
Aged about 58 years,
R/o No.345, Ganesha Gudi Road,
Nelamangala Town,
Bangalore Rural District.



8. Nazir Ahmed Sharif S/o
Late Abdul Kareem,
Aged about 66 years,
R/o Masjid Road,
Nonavinakere Hobli,
Tiptur taluk.

**(D-2 R/ by Sri.SS Advocate
D-2(a) R/ by Sri.BS Advocate
D-5 R/ by Sri.UR Advocate
D-6 R/ by Sri.HB Advocate
D-8 R/ by Sri.HLB Advocate
* * ***

1. Date of presentation of the suit	: 09.04.2015
2. Nature of the suit	: Partition & separate possession
3. Evidence commenced on	: 25.07.2022
4. Evidence closed on	: 01.08.2025
5. Judgment pronounced on	: 11.08.2026
6. Duration of the suit	: Year/s Month/s Day/s 11 04 02

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



J U D G E M E N T

The Plaintiffs have filed the present suit against the defendants seeking the relief of partition and separate possession of the suit schedule property.

2. Description of the Property:-

SCHEDULE

Properties situated at Nagaraghatta, Nonavinakere Hobli, Tiptur taluk.

1. Sy. No.99/1, measuring 1.20 guntas bounded by:-

East: Ningappa,

West: Road and Siddaniah,

North: Mallappa,

South: Yadiyur Road.

2. Sy. No.33/2, measuring 1.14 guntas bounded by:-

East: Road,

West: Basappa,

North: Bandi Mallaiah,

South: Shivalingaiah.

3. Sy. No.118/6, measuring 0.02 guntas bounded by:-

East: Road,



West: Road,

North: Road,

South: A.K.Colony.

4. House bearing Sl. No.65, property No.142, bounded by:-

East: Road,

West: Road and Siddabasavaiah,

North: Road,

South: Road.

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

3.1 It is the case of the plaintiffs that the suit schedule properties were originally the ancestral and joint family properties of Ramakka, wife of Shankrappa, who is the grandmother of the plaintiffs herein. The said Ramakka and Shankrappa had six children, who are the defendants herein. After the death of Ramakka, the revenue records pertaining to the suit schedule properties were mutated in the name of her husband, Shankrappa, by way of inheritance. However, the plaintiffs and defendants continued to be in joint possession and enjoyment of the suit schedule properties.



3.2 It is further contended that Shankrappa, without the knowledge and consent of the plaintiffs, executed a Will in favour of defendant No.2. Based on the said Will, the revenue records pertaining to the suit schedule properties were mutated in the name of defendant No.2. The suit schedule properties are the ancestral and joint family properties of the plaintiffs and defendants, and the plaintiffs are entitled to a share therein. When the plaintiffs demanded partition and separate possession of their share in the suit schedule properties from the defendants, the defendants denied the same. Hence, the present suit.

4. Issuance of Process: Upon the institution of the suit, this court issued summons to the Defendants, which was duly served. In response to the summons, the Defendants appeared before this court through their respective counsel. The Defendant No.2 and 5 have filed their respective written statements contesting the plaintiff's case.

5. Brief facts as averred in the written statement of Defendant No. 2 and 5 are as follows :

5.1 Defendant No. 5 filed the written statement, admitting all the averments made in the plaint and sought for decreeing the



suit.

5.2 Defendant No. 2 filed his written statement denying all the averments made in the plaint. He contended that the suit schedule properties are neither the joint family properties of the plaintiffs and defendants nor are the plaintiffs and defendants in joint possession and enjoyment thereof. According to him, the suit schedule properties were the self-acquired properties of Shankrappa and the stridhan properties of his wife, Ramakka. After the death of Ramakka, her properties were mutated in the name of Shankrappa, who thereby acquired right, title and interest over the same. Consequently, the properties became the separate properties of Shankrappa, who was in possession and enjoyment thereof for more than 20 years until his death.

5.3 It is further contended that, as defendant No. 2 was taking care of Shankrappa, the latter executed a registered Will in favour of defendant No. 2 on 16.06.1997. After the death of Shankrappa, based on the said Will, defendant No. 2 got the revenue records of the suit schedule properties mutated in his name and has been paying the taxes and is in possession and enjoyment of the same.



5.4 It is further contended that defendant No. 2 had filed a suit against defendant No. 3 seeking permanent injunction in respect of the suit schedule properties and obtained a decree therein on 03.06.2005. In the said proceedings, neither the plaintiffs nor defendant No. 3 raised any objection with regard to the registered Will.

5.5 It is also contended that the father of the plaintiffs, i.e., defendant No. 3, had earlier filed O.S. No. 205/2003 against defendant No. 2 and others seeking partition and separate possession in respect of the suit schedule properties. The said suit was dismissed on 08.02.2006. Therefore, it is contended that the present suit is barred by the principles of res judicata. On these grounds, defendant No. 2 sought for dismissal of the suit.

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

ISSUE No.1 : Whether the plaintiffs prove that, they along with defendants constitute a Hindu undivided joint family and that the suit schedule properties are their ancestral and joint family properties?



ISSUE No.2 : Whether the plaintiffs prove that the registered will dtd.16.06.1997 executed by Shankrappa in favour of defendant No.2 is null and void?

ISSUE No.3 : Whether the plaintiffs are entitled to the relief/s as prayed for?

ISSUE No.4 : What order or decree?

ADDITIONAL

ISSUES No.1 : Whether the suit is barred by res-judicata?

7. Plaintiff evidence: In order to prove their case, the plaintiff No.1 examined himself as PW-1 by filing an affidavit in lieu of examination-in-chief and got marked 6 documents as Ex.P-1 to 6, which are as follows:-

EX. P-1 to 3	Are RTCs peratining to properties bearing Sy.No.99/6, 99/7 and 99/8. These RTCs do not pertain to the suit schedule properties.
EX. P-4 and 5	Is mutation register bearing MR.No.H17/2015-16 and H16/2015-16, which pertains to property bearing Sy.No.99/8 and 99/6. This also does not pertain to the suit schedule properties.
EX. P-6	Is the sale deed dated 06.06.2016 executed by Defendant No.2 in favour of Defendant No.7 and 8 pertaining to Sy.No.99/6, which also do not pertain to the suit schedule properties.



8. Defendant evidence : In order to disprove the case of the Plaintiff, Defendant No.2 (b) examined himself as Dw-1 and got marked 13 documents as Ex.D-1 to 13, which are as follows:-

Ex.D-1	Is the Order sheet in O.S.No.219/2003, in the court of the Principal Civil Judge and JMFC, Tiptur.
Ex.D-2	Is the Plaint filed in O.S.No.219/2003, in the court of the Principal Civil Judge and JMFC, Tiptur.
Ex.D-3	Is the judgment and decree passed in O.S.No.219/2003, in the court of the Principal Civil Judge and JMFC, Tiptur.
Ex.D-4	Is the Order sheet in O.S.No.205/2003, in the court of the Principal Civil Judge and JMFC, Tiptur.
Ex.D-5	Is the Plaint filed in O.S.No.205/2003, in the court of the Principal Civil Judge and JMFC, Tiptur.
Ex.D-6	Is the Mutation Register bearing MR.No.13/1998-99, pertaining to the suit schedule properties.
Ex.D-7	Certified copy of the Will dated 16.06.1997.
Ex.D-8	Is the RTC pertaining Sy.No.99/6, standing in the name of Defendant No.2.
Ex.D-9	Is the RTC pertaining suit Item No.3 schedule property, standing in the name of Defendant No.2.
Ex.D-10	Notarised Family Tree.
Ex.D-11	Is the Mutation Register bearing MR.No.13/1998-99, pertaining to the suit schedule properties.
Ex.D-12 and 13	Is the RTC pertaining suit Item No.2 schedule property, standing in the name of Defendant No.2.



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 and Defendants, 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 Partly affirmative
Additional Issue No.1	:	In the Negative
Issue No.4	:	As per final order.

for the following:

REASONS

11. ISSUE No.1 & 2 : 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. It is not in dispute between the parties that the suit schedule properties originally belonged to Ramakka, who had acquired the same from her parental side. Accordingly, the said properties constituted her stridhana property. It is also not in dispute that Ramakka died intestate. Therefore, upon her death, succession to the said properties opened in accordance with Section 15 of the Hindu Succession Act, 1956. As per Section 15(1)(a) of the said Act, the property of a female Hindu dying intestate devolves firstly upon her sons and daughters (including the children of any predeceased son or daughter) and her husband. Accordingly, upon the death of Ramakka, her husband, Shankrappa, and her six children succeeded to the suit schedule properties in equal shares.

13. It is also not in dispute between the parties that, after the death of Ramakka, Shankrappa, her husband, got the revenue records pertaining to the suit schedule properties mutated in his name by way of inheritance from the name of Ramakka. However, the mere mutation of the revenue records in the name of Shankrappa, by itself, would not confer upon him an exclusive



right, title or interest over the entire suit schedule properties. In view of the succession having opened upon the intestate death of Ramakka, Shankrappa, along with the other Class-I heirs of Ramakka, succeeded to the properties in accordance with law. Therefore, Shankrappa could not have acquired exclusive title over the entire properties merely on the basis of the mutation of the revenue records in his name.

14. It is well settled that mutation of revenue records neither creates nor extinguishes title to immovable property. Therefore, merely because the revenue records stood exclusively in the name of Shankrappa, the rights of the other legal heirs of Ramakka could not have been extinguished. Such rights could be lost only in accordance with law, such as by a valid release, relinquishment or other legally recognised mode of transfer, or by a plea of ouster supported by the necessary pleadings and proof. In the present case, defendant No.2 has neither pleaded nor established any such release, relinquishment or ouster.

15. Therefore, Shankrappa did not possess an independent and exclusive right over the entirety of the suit schedule properties so as to be competent to bequeath the entire properties in favour of defendant No.2 under a Will. It is true that the plaintiffs have



admitted the execution of a registered Will by Shankrappa in favour of defendant No.2. To the extent of the plaintiffs' own claim, such admission dispenses with the necessity of defendant No.2 proving the fact of execution of the Will as against the plaintiffs. However, the said Will is relied upon by defendant No.2 not merely against the plaintiffs but also against the other co-sharers. Therefore, defendant No.2 was required to establish the due execution and attestation of the Will in accordance with law insofar as the rights of the other co-sharers are concerned.

16. Admittedly, defendant No.2 has neither produced the original Will before this Court nor examined any of its attesting witnesses. Defendant No.2 contends that the original Will had been produced in O.S. No.219/2003, in which a decree was passed on 03.06.2005, and that the original Will was not returned thereafter. It is further contended that the records of the said suit were subsequently sent to the Central Records, Tumakuru, and that the said document has since been destroyed. However, defendant No.2 has not produced any material before this Court to establish that the original Will was in fact destroyed or that the records of O.S. No.219/2003 containing the said Will were destroyed. In the absence of such material, the explanation offered by defendant No.2 for non-production of the original Will



cannot be accepted merely on the basis of an assertion.

17. Further, no attesting witness to the Will has been examined before this Court. Consequently, defendant No.2 has failed to establish the due execution and attestation of the registered Will in accordance with the requirements of law. Mere registration of a Will does not, by itself, dispense with the requirement of proving its due execution and attestation.

18. During the course of arguments, learned counsel appearing for defendant No.2 vehemently contended that the Will is a document more than 30 years old and, therefore, the presumption contemplated under Section 90 of the Indian Evidence Act, 1872, ought to be drawn in favour of its due execution and attestation. Section 90 of the Indian Evidence Act permits the Court to draw a presumption in respect of a document which is 30 years old when such document is produced from proper custody. However, in the case of a Will, such presumption cannot be invoked so as to dispense with the statutory requirement of proving the Will in the manner prescribed by law. In the present case, in any event, the original Will itself has not been produced before this Court and the explanation regarding its alleged destruction has not been



substantiated by any acceptable documentary evidence. Therefore, the benefit of Section 90 of the Indian Evidence Act cannot be extended to defendant No.2 in the facts and circumstances of the present case.

19. In view of the above discussion, this Court is of the opinion that defendant No.2 has failed to prove the due execution and attestation of the alleged registered Will relied upon by him. Consequently, the said Will cannot be acted upon for determining the rights of the parties in respect of the suit schedule properties.

20. Coming to the question of the nature of the suit schedule properties and the entitlement of the parties, it is already held that the suit schedule properties originally belonged to Ramakka and that she acquired the same from her parental side. The plaintiffs, however, have described the properties as the ancestral properties of Ramakka. Except for the assertion contained in the plaint, the plaintiffs have not produced any documentary evidence to establish that the properties were ancestral properties in the hands of Ramakka. The materials available on record only establish that Ramakka had acquired the suit schedule properties from her parental side. Therefore, the ancestral character of the properties, as pleaded by the plaintiffs,



has not been established.

21. Nevertheless, the fact that the properties were the properties of Ramakka is not in dispute. Ramakka died intestate. Therefore, upon her death, succession opened in accordance with Section 15(1)(a) of the Hindu Succession Act, 1956. Consequently, her husband, Shankrappa, and her sons and daughters succeeded to her properties in accordance with law.

22. It is further contended by defendant No.2 that the plaintiffs have not produced any genealogical tree and that the plaint does not clearly disclose the relationship between the plaintiffs and the defendants. It is true that the plaintiffs have not produced a separate genealogical tree and that the genealogy has not been set out in the plaint with sufficient particulars. The plaint merely states that the plaintiffs are the grandchildren of Ramakka and that defendants are the children of Ramakka. Ordinarily, the genealogy of the parties ought to have been clearly pleaded so as to enable the Court to ascertain the precise relationship between the parties. However, the mere absence of a genealogical tree, by itself, cannot result in dismissal of the claim if the relationship between the parties can otherwise be established from the pleadings and evidence available on record.



23. In the present case, during the course of cross-examination of PW1, learned counsel appearing for defendant No.2 suggested to PW1 that defendant No.3, Siddappa, is his father. PW1 admitted the said suggestion. Thus, it stands established that the plaintiffs are the children of defendant No.3. Further, during the course of cross-examination of DW1, who is the son of defendant No.2, he admitted that his father's name is Gangadharappa and that Gangadharappa is the brother of defendant No.3, the father of the plaintiffs. He further admitted that defendant No.3 and his father had four sisters, namely Lakshamma, defendant No.1; Parvatamma, defendant No.4; Puttathayamma, defendant No.5; and Jayamma, defendant No.6. These admissions clearly establish that Ramakka and Shankrappa had six children, namely defendant Nos.1 to 6, of whom defendant Nos.1 and 4 to 6 are daughters and defendant Nos.2 and 3 are sons.

24. Therefore, the relationship between the parties stands sufficiently established from the oral evidence and the admissions elicited during cross-examination. The absence of a separate genealogical tree does not, in the facts of the present case, defeat the claim insofar as the relationship between the parties is concerned.



25. However, the plaintiffs, being the children of defendant No.3, cannot claim an independent share in the properties of Ramakka during the lifetime of their father. Defendant No.3, being one of the children of Ramakka, is himself alive and is a Class-I heir of Ramakka. The plaintiffs do not directly succeed to the estate of Ramakka in the presence of their father, defendant No.3. Therefore, the plaintiffs cannot claim a share in the suit schedule properties in their own right as heirs of Ramakka.

26. At the same time, defendant No.5 has filed a written statement admitting the averments made in the plaint and expressing her willingness to pay the requisite court fee on her share and seeking a decree for partition and separate possession of her share in the suit schedule properties. Thus, defendant No.5, who is herself one of the children and legal heirs of Ramakka, has independently asserted her right to seek partition and separate possession.

27. It is well settled that in a suit for partition, the parties who are entitled to a share in the property are, in substance, co-plaintiffs, irrespective of the manner in which they are arrayed in the cause title. Merely because a person entitled to a share is arrayed as a defendant, such person does not lose the right to



seek allotment of his or her legitimate share. Therefore, the claim of defendant No.5 for partition and separate possession of her share can be considered in the present proceedings.

28. Accordingly, though the plaintiffs themselves are not entitled to a share during the lifetime of defendant No.3, the present suit cannot be dismissed in its entirety merely on that ground, particularly when defendant No.5, who is a direct heir of Ramakka, has expressly sought partition and separate possession of her share.

29. The evidence on record further establishes that defendant Nos.1 to 6 are the six children of Ramakka and Shankrappa. There is no acceptable evidence before the Court to establish that there had been any partition among defendant Nos.1 to 6 after the death of Ramakka. There is also no acceptable evidence to establish that the rights of any of the said legal heirs were relinquished or otherwise extinguished in accordance with law.

30. Therefore, defendant Nos.1 to 6 continue to have rights in the properties inherited from Ramakka, subject to their respective shares under the Hindu Succession Act, 1956. The suit schedule properties are accordingly available for partition among the legal



heirs of Ramakka who are entitled to succeed to the same.

31. A pertinent aspect to be noted is that the plaintiffs have pleaded that the suit schedule properties are ancestral properties of Ramakka. However, as already discussed, the plaintiffs have failed to establish the ancestral character of the properties by producing any documentary or other convincing evidence. The mere fact that Ramakka acquired the properties from her parental side does not, in the absence of further evidence, establish that the properties were ancestral properties in her hands.

32. In view of the foregoing discussion, this Court is of the considered opinion that the plaintiffs have failed to establish their independent entitlement to a share in the suit schedule properties during the lifetime of their father, defendant No.3. However, defendant Nos.1 to 6, being the children of deceased Ramakka, are entitled to succeed to her estate in accordance with Section 15(1)(a) of the Hindu Succession Act, 1956. Defendant No.5 has expressly sought partition and separate possession of her share. Therefore, the suit cannot be dismissed in its entirety on the ground that the plaintiffs themselves are not presently entitled to a share. Accordingly, **Issue No.1** is answered



in the **partly affirmative** and **Issue No.2** is answered in the **negative**.

33. Additional Issue No.1: The specific defence of defendant No.2 is that the present suit is barred by the principles of res judicata. It is contended that defendant No.3, who is the father of the plaintiffs, had earlier instituted O.S. No.205/2003 against defendant Nos.1, 2 and 4 to 6 in respect of the very same suit schedule properties, seeking partition and separate possession of his share and for a declaration that the alleged Will executed by Shankrappa was not binding upon his share. It is further contended that the said suit came to be dismissed on 08.02.2006 and, therefore, the present suit, being one instituted by the children of defendant No.3 claiming through him, is barred by res judicata. On the said ground, defendant No.2 has sought for dismissal of the present suit.

34. In order to establish the institution and disposal of the earlier suit, defendant No.2 has produced the order sheet and plaint in O.S. No.205/2003, which are marked as Ex.D4 and Ex.D5 respectively. A perusal of Ex.D4 and Ex.D5 discloses that defendant No.3 herein had instituted the said suit against defendant Nos.1, 2 and 4 to 6 herein, seeking partition and



separate possession in respect of the suit schedule properties involved in the present suit. He had also sought a declaration that the alleged Will said to have been executed by Shankrappa was not binding upon his share and had sought delivery of possession of his share and rendition of accounts.

35. It is further evident from Ex.D4 that the said suit was dismissed for default on 08.02.2006. There is no material available on record to establish that the said dismissal was subsequently set aside or that the said suit was restored and proceeded with thereafter.

36. At this stage, it is necessary to examine the relevant provisions of Order IX of the Code of Civil Procedure, 1908. Order IX Rule 3 CPC provides that where neither party appears when the suit is called on for hearing, the Court may make an order that the suit be dismissed. In such a case, Order IX Rule 4 CPC enables the plaintiff, subject to the law of limitation, to bring a fresh suit or to apply for setting aside the dismissal.

37. On the other hand, Order IX Rule 8 CPC provides that where the defendant appears and the plaintiff does not appear when the suit is called on for hearing, the Court shall make an order that



the suit be dismissed, unless the defendant admits the claim or part thereof, in which case the Court shall pass a decree against the defendant upon such admission.

38. Order IX Rule 9 CPC further provides that where a suit is wholly or partly dismissed under Rule 8, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action. However, the plaintiff may apply for an order to set aside the dismissal, upon satisfying the Court that there was sufficient cause for his non-appearance when the suit was called on for hearing.

39. In the present case, Ex.D4 discloses that defendant No.2 herein, who was defendant No.1 in the earlier suit, had appeared through counsel. Subsequently, the other defendants also appeared and filed their vakalaths. Thereafter, the counsel appearing for the plaintiff in the said suit filed a retirement memo seeking permission to retire from the proceedings. Consequently, Court notice was issued to the plaintiff therein and the said notice was duly served. In spite of service of notice, the plaintiff did not appear before the Court. He was called absent and, consequently, the suit came to be dismissed for default.



40. Therefore, the dismissal of O.S. No.205/2003 was not a dismissal falling under Order IX Rule 3 CPC, where neither party appears. On the contrary, the facts disclosed in Ex.D4 clearly indicate that the defendants had appeared, whereas the plaintiff remained absent despite service of notice. Thus, the dismissal squarely falls within the scope of Order IX Rule 8 CPC. Consequently, the bar contemplated under Order IX Rule 9 CPC would operate against the plaintiff in the earlier suit from instituting a fresh suit in respect of the same cause of action, unless the dismissal is first set aside in accordance with law.

41. It is next necessary to consider whether the present suit is barred by the principle of res judicata under Section 11 CPC. Section 11 CPC embodies the principle that no Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, before a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and such matter has been heard and finally decided by such Court.



42. In the present case, from a perusal of Ex.D4 and Ex.D5, it is clear that the parties to the earlier suit and the present proceedings are substantially connected and that the subject matter of the earlier suit was the very same suit schedule properties. It is also not in dispute that the earlier suit was instituted before a competent Court.

43. However, the last and essential requirement of Section 11 CPC is that the matter directly and substantially in issue in the former suit must have been heard and finally decided by the competent Court. In the present case, O.S. No.205/2003 was not decided on merits. The said suit was dismissed for default on account of the non-appearance of the plaintiff therein. There was, therefore, no adjudication of the substantive rights of the parties in respect of the suit schedule properties.

44. Consequently, the dismissal of O.S. No.205/2003 for default cannot, by itself, constitute a final decision on the merits so as to attract the doctrine of res judicata under Section 11 CPC. The appropriate statutory consequence of such dismissal is the bar contemplated under Order IX Rule 9 CPC.



45. Therefore, this Court is of the opinion that the present suit is not barred by the principle of res judicata under Section 11 CPC, as contended by defendant No.2. However, insofar as the plaintiffs claim through defendant No.3, who was the plaintiff in the earlier suit and whose suit was dismissed under Order IX Rule 8 CPC, the bar under Order IX Rule 9 CPC assumes significance.

46. As already discussed while considering the earlier issues, the plaintiffs are the children of defendant No.3. They are not direct heirs of Ramakka during the lifetime of their father, defendant No.3, and consequently they have no independent right to seek partition of the estate of Ramakka during the lifetime of defendant No.3. Further, the plaintiffs claim through defendant No.3, who had already instituted O.S. No.205/2003 seeking partition in respect of the very same properties.

47. Nevertheless, defendant No.5 has filed her written statement specifically seeking partition and separate possession of her share and has expressed her willingness to pay the requisite court fee. Defendant No.5 is herself one of the children and legal heirs of Ramakka and, therefore, possesses an independent right to seek partition of the estate inherited from Ramakka. Her right



does not arise through defendant No.3 and is not affected by the dismissal for default of the earlier suit instituted by defendant No.3.

48. In a suit for partition, a person who is otherwise entitled to a share in the joint property cannot be deprived of such substantive right merely because such person has been arrayed as a defendant. For the purpose of adjudicating the claim of such a co-sharer, such defendant is in the position of a plaintiff insofar as the relief of partition claimed by him or her is concerned. Therefore, the claim of defendant No.5 for partition can be adjudicated in the present proceedings, subject to payment of the requisite court fee.

49. Accordingly, this Court is of the considered opinion that the present suit is not barred by Section 11 CPC. However, the plaintiffs cannot maintain their claim for partition in view of the dismissal of the earlier suit instituted by defendant No.3 and their lack of an independent right in the estate of Ramakka during the lifetime of defendant No.3. At the same time, the independent claim of defendant No.5 for partition is maintainable and is required to be adjudicated. Accordingly, the **Additional Issue No.1** is answered in the **Negative**.



50. Issue No.3: As already discussed while answering the preceding issues, the plaintiffs are the children of defendant No.3, who is admittedly one of the sons of deceased Ramakka. Since defendant No.3 is alive, the plaintiffs do not have an independent right to succeed to the estate of Ramakka during his lifetime. Consequently, the plaintiffs cannot claim a share in the suit schedule properties in their own right as legal heirs of Ramakka.

51. Further, defendant No.3 had already instituted O.S. No.205/2003 seeking partition and separate possession in respect of the very same suit schedule properties, and the said suit was dismissed for default under Order IX Rule 8 CPC. Therefore, the plaintiffs, who claim through defendant No.3, cannot circumvent the consequence of the said dismissal and maintain a fresh claim for partition in respect of the same cause of action.

52. However, defendant No.5 has independently sought partition and separate possession of her share in the present proceedings. As defendant No.5 is herself one of the children of Ramakka and a direct legal heir, her right to seek partition is independent of the right claimed by the plaintiffs. Therefore, notwithstanding the



dismissal of the claim of the plaintiffs, the Court is required to determine the share to which defendant No.5 is entitled.

53. As already held, the suit schedule properties admittedly belonged to Ramakka. The evidence on record establishes that she had acquired the properties from her parental side and that the properties constituted her separate property. Ramakka died intestate. Shankrappa, her husband, also subsequently died. Defendant No.2 has contended that Shankrappa had executed a registered Will in his favour. However, for the reasons already discussed, defendant No.2 has failed to prove the due execution and attestation of the said Will in accordance with law. Consequently, the alleged Will cannot be acted upon for determining the rights of the parties.

54. Therefore, the suit schedule properties, being the properties of Ramakka, devolved upon her legal heirs upon her intestate death in accordance with Section 15 of the Hindu Succession Act, 1956. Since Ramakka was survived by her husband, Shankrappa, and her six children, the six children succeeded to the properties along with Shankrappa in accordance with the statutory scheme. However, Shankrappa subsequently died and, as already held, there is no valid Will proved by defendant No.2.



Consequently, the rights in the properties ultimately devolved upon the six children of Ramakka.

55. During the pendency of the present proceedings, defendant Nos.1, 2 and 4 died and their respective legal representatives were brought on record. Since defendant Nos.1, 2 and 4 were among the six children of Ramakka, each of them had a one-sixth share in the suit schedule properties. Upon their death, their respective one-sixth shares devolved upon their respective legal representatives in accordance with law.

56. The defendant Nos.7 and 8 have also been brought on record as parties. However, the plaint has not been amended to disclose their precise relationship with the parties or the capacity in which they have been brought on record. In the absence of necessary pleadings and supporting material regarding their status and entitlement, no specific finding can be recorded with regard to their rights in the suit schedule properties.

57. Consequently, the legal representatives of deceased defendant No.1, namely defendant Nos.1(a) and 1(c), together are entitled to the 1/6th share which originally belonged to defendant No.1. The legal representatives of deceased defendant No.2, namely



defendant Nos.2(a) to 2(e), together are entitled to the 1/6th share which originally belonged to defendant No.2. Defendant No.3 is entitled to 1/6th share. The legal representatives of deceased defendant No.4, namely defendant Nos.4(a) to 4(d), together are entitled to the 1/6th share which originally belonged to defendant No.4. Defendant No.5 is entitled to 1/6th share and defendant No.6 is entitled to 1/6th share in the suit schedule properties.

58. Thus, although the plaintiffs are not entitled to the relief of partition and separate possession sought by them, the independent claim of defendant No.5 for partition is liable to be recognised and adjudicated in the present proceedings.

59. In the light of the above detailed discussion, this Court is of the considered opinion that the plaintiffs have failed to establish their entitlement to the relief sought in the plaint. However, defendant No.5, being one of the direct legal heirs of deceased Ramakka, is entitled to her legitimate share in the suit schedule properties. Accordingly, **Issue No.3** is answered **Partly in the Affirmative**.



60. ISSUE No.4 : In view of the findings of this court on Issue No.1 to 3 and Additional Issue No.1, this court proceeds to pass the following;

ORDER

The suit filed by the plaintiffs is hereby partly decreed.

The claim of the plaintiffs for partition and separate possession of their share in the suit schedule properties is hereby rejected, as the plaintiffs are not entitled to claim any share in the suit schedule properties during the lifetime of defendant No.3.

However, defendant No.5, having independently sought partition and separate possession of her share in the suit schedule properties, is entitled to the relief of partition. Accordingly, a preliminary decree for partition is hereby passed, declaring the shares in the suit schedule properties as follows:

1. Defendant Nos.1 (a) to 1 (c) together are



entitled to 1/6th share;

2. Defendant Nos.2 (a) to 2 (e) together are entitled to 1/6th share;

3. Defendant No.3 is entitled to 1/6th share;

4. Defendant Nos.4 (a) to 4 (d) together are entitled to 1/6th share;

5. Defendant No.5 is entitled to 1/6th share; and

6. Defendant No.6 is entitled to 1/6th share in the suit schedule properties.

The aforesaid shares shall be worked out in the final decree proceedings in accordance with law.

Defendant No.5 shall be entitled to seek separate possession of her share by metes and bounds, subject to payment of the requisite court fee.

In the circumstances of the case, there shall be no order as to costs.



Draw preliminary 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 11th day of August 2026]

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

ANNEXURES

Witnesses examined on behalf of plaintiff :

PW-1 : N.S.Sadashivaiah

List of documents exhibited for the plaintiff :

Ex:P1 to3 : RTCs

Ex:P4 & 5 : Mutation register bearing MR.No.H17/2015
-16 and H16/2015-16

Ex:P6 : Sale deed

Witnesses examined on behalf of defendant:

DW.1 : Mahadevaiah

Documents marked on behalf of defendant:

Ex:D1 : Order sheet in O.S.No.219/2003

Ex:D2 : Complaint filed in O.S.No.219/2003, in the
court of the Principal Civil Judge and



JMFC, Tiptur.

- Ex:D3** : judgment and decree passed
in O.S.No.219/2003
- Ex:D4** : Order sheet in O.S.No.205/2003
- Ex:D5** : Complaint filed in O.S.No.205/2003
- Ex:D6** : Mutation Register bearing MR.No.13/1998-99
- Ex:D7** : Certified copy of the Will dated 16.06.1997.
- Ex:D8 & 9** : RTCs
- Ex:D10** : Notarised Family Tree.
- Ex:D11** : Mutation Register bearing MR.No.13/1998-99
- Ex:D12 & 13** : RTCs

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

KATK920036052015



KATK920036052015



KATK920036052015



KATK920036052015



KATK920036052015



KATK920036052015

