

KACD020033602022



**IN THE COURT OF II ADDL. SENIOR CIVIL JUDGE
AND J.M.F.C. AT CHITRADURGA**

Dated this the 06th day of April, 2026

**PRESENT: Smt.Ujwala Veeranna Siddannavar, B.Sc., LL.M.,
II Addl. Senior Civil Judge and J.M.F.C.,
Chitradurga.**

R.A.No.42/2022

Appellant/s:

1. Krishna S/o Kantharaj,
Aged about 26 years,
2. Kiran S/o Kantharaj,
Aged about 24 years,

Both are residents of
Alagavadi Village,
Bharamasagara Hobli,
Chitradurga Taluk.

(By Sri.B.K.R. Advocate)

-Vs-

Respondent/s:

1. N.Kantharaj,
S/o H. Narasappa,
aged about 57 years,
2. H.Kanumappa,
S/o Hanumappa,
aged about 65 years,

3. Sarojamma,
W/o H.Kanumappa,
Aged about 58 years,
All are R/o Alagavadi Village,
Bharamasagara Hobli,
Chitradurga Taluk.

(R1 – Dispense)

(R2 and R3 By Sri.G.B.S., advocate)

Date and Nature of Order or Decree Appealed against :	The Judgment and Decree passed in O.S.No.336/2020 dated: 29.10.2022 by the II Addl. Civil Judge and J.M.F.C., Chitradurga.		
Date of institution of the appeal	06.01.2023		
Date of Judgment in the appeal	06.04.2026		
Duration of the Appeal	Year/s 03	Month/s 05	Day/s 24

**II Addl. Sr. Civil Judge and J.M.F.C
Chitradurga.**

J U D G M E N T

This is an appeal filed by plaintiffs against defendants questioning the judgment and decree dated:13.09.2022 passed by the II Addl. Civil Judge and J.M.F.C., Chitradurga in O.S.No.336/2017 thereby and wherein the trial Court inter-alia dismissed the suit of

plaintiffs with respect the land bearing Re.Sy.No.56/4 measuring 2 acres 20 guntas situated at Alagavadi Village, Bharamasagara Hobli, Chitradurga Taluk, bounded by East-Land of Manjappa, West-Land of Devendrappa, North-Land of Arun Kumar S/o Rudrappa and South-Land of Nanjappa Basanna. This court passed judgment and decree allowing appeal on 01.07.2024. Aggrieved by the said judgment and respondent preferred an appeal RSA.No.1466/2024 which is allowed and this appeal is remanded for considering judgment. **(herein after referred as suit schedule property)**

2. For the sake of convenience, the parties to this appeal hereinafter will be referred with their ranks assigned to them before the trial Court.

3. Brief facts of the case of plaintiffs is as follows:

(a) H.Narasappa was original prepositor of the family. He had five sons they are plaintiffs' father N.Kantaraj, N.Ashok Kumar, H.N.Thippeswamy,

H.N.Shivanna Thathamurthy and H.N.Vasantha Kumar. Plaintiffs' father N.Kantharaj married Nagaveni. Plaintiffs' grand father H.Narasappa acquired suit schedule properties and other properties through partition dated 30.05.1994, which is executed among his brothers. After the partition plaintiffs father was in peaceful possession and enjoyment over the said property without interruption. Some dispute arose among H.Narasappa and his sons therefore they partitioned property through a registered partition deed dated 06.05.1998. In the said partition suit schedule properties were fallen to the share of plaintiffs' father and plaintiffs. From then plaintiffs and defendant No.1 are in peaceful and constructive possession and enjoyment over the suit schedule property.

(b) Defendant No.1 being eldest male member of the family managed family as a Kartha and also managed affairs of suit schedule property. It is alleged that defendant No.1 colluding with defendant No.2 and 3

began to misuse joint family funds. When plaintiffs demanded their legitimate share in the suit schedule property, defendant No.1 refused to give their share. Hence panchayath convened in the presence of elders of the village. In the said panchayath defendants have been advised to give share to plaintiffs, but they refused. Hence suit for partition separate possession is filed by plaintiffs seeking their legitimate share.

(c) It is further alleged that defendants colluding with each other to harass and cause loss and inconvenience to plaintiffs, have concocted, created and manipulated forged revenue records with respect to suit schedule property in the name of defendant No.2 and 3 without knowledge of plaintiffs. Further defendant No.1 has no absolute right to create such revenue records, hence they are not binding upon legitimate share of plaintiffs.

d) It is further alleged that defendant No.3 is trying to alienate suit schedule property to defraud the rights of

plaintiffs, hence plaintiffs claim their share in the ancestral and joint family properties being class-I heirs of defendant No.1.

4. On service of summons defendant No.1 remained absent hence placed *exparte*. Defendant No.2 and 3 have appeared through counsel but not filed their written statements nor denied claim of plaintiffs.

5. On the hearing arguments of plaintiffs' counsel and considering materials on record the trial court dismissed the suit holding that plaintiffs have failed to establish the nature of suit schedule property as ancestral. Further it is held that suit schedule property is self-acquired property of defendant No.1 and therefore plaintiffs are having no right and share, accordingly suit is dismissed.

6. To prove their case plaintiffs have examined plaintiff No.1 as PW-1 and adduced 2 documentary evidence which are marked as Ex.P.1 and P.2.

Defendants have not adduced any oral or documentary evidence nor cross examined plaintiff witnesses.

7. Based on the above pleadings, trial Court framed following points for consideration:

1. Whether the plaintiffs proves that they are entitled for the relief of partition and separate possession of 2/3rd share as prayed for?
2. Whether the plaintiffs are entitled for the relief of partition and separate possession as prayed for?
3. What order or decree?

8. After appreciating oral and documentary evidence on record, trial Court dismissed the suit of plaintiffs by answering issue no.1 and 2 in negative. No cross-appeal has been preferred by respondents.

9. Challenging the said judgment and decree plaintiffs approached this Court in appeal under Order 41 Rule 1 R/w. Sec.96 of C.P.C on the following grounds:

- a)** The Trial court erred in dismissing the suit of plaintiff and erred in framing points for consideration.

b) The Trial court erred in giving finding to point No.1 and 2 in negative and dismissed the suit of plaintiffs.

c) The Trial Court erred in disbelieving evidence of PW.1 and not considered documentary evidence produced by plaintiffs.

d) The trial court erred in not considering well established principle of law that all the legal heirs of prepositor of joint family have got equal right in the ancestral joint family property and without considering the said fact trial court erred in dismissing the suit.

e) The trial court grossly erred in not considering that suit schedule property is ancestral joint family property of plaintiffs and defendants. Even though Ex.P4 partition deed entered between Narasappa and his sons shows that suit schedule property is ancestral and joint family property of plaintiffs. Without considering evidence the trial court dismissed the suit of plaintiffs only on the basis of assumption and presumption.

f) The suit schedule property is acquired by plaintiffs father on behalf of plaintiffs and whole family through a registered partition deed. Therefore plaintiffs father being the branch received property. Plaintiffs have sought partition in said property before trial court. Without looking into the said registered partition deed and not discussing about Ex.P4 trial court dismissed the suit.

g) All the legal heirs have got equal share and right in the ancestral and joint family properties. Without considering the said settled principle of law trial court dismissed the suit.

Therefore, pray to set aside the judgment and decree passed by trial court by allowing the appeal.

No cross appeal filed by respondents. An application U/o.41 Rule 27 CPC along with list of documents submitted by respondents after remand of the matter by second appellate court.

10. Having heard learned counsel for contesting parties, the following points arise for my consideration in this appeal;

Point No.1: Whether appellants prove that suit schedule property is ancestral joint family property held by them along with defendants?

Point No.2: Whether respondent prove that they may be permitted to submit additional documents U/o.41 rule 27 CPC?

Point No.3: Whether interference is required?

Point No.4: What Order or decree?

11. My answer to the above point No.1 to 4 are as follows:

Point No.1 and 3: In the Negative

Point No.2 : In the Affirmative

Point No.4 : As per final order
for the following:

REASONS

12. Point No.1 to 3:- All these points are discussed together in order to avoid repetition of facts and reasoning, as they are inter linked with each other.

13. Appellants filed suit for seeking partition and separate possession with respect to suit schedule properties claiming them as ancestral joint family properties acquired by their father defendant no.1 during his lifetime. Without the knowledge of plaintiffs, defendant no.1 alienated suit schedule property in favour of defendant no.2 and subsequently defendant no.2 gifted the said property to defendant no.3. Hence as plaintiffs are having share in the suit schedule properties, filed suit for seeking partition and separate possession in the suit schedule properties. Defendants remained absent before trial Court and not submitted their written statements.

14. The trial court by considering the materials available on record dismissed the claim of plaintiffs. Aggrieved by the same, plaintiffs have preferred appeal RA.No.42/2022 before this court, which is allowed by the judgment dated 01.07.2024. Aggrieved by the said judgment, defendants have preferred second appeal before Hon'ble High Court of Karnataka RSA.1466/2024. The said second appeal is allowed through judgment dated 04.12.2025 with a direction to dispose of the matter afresh within 3 months by considering application under Order 41 Rule 27 CPC and also on merits exercising power under Order 41 Rule 31 CPC. Therefore this case was heard afresh on merits from both the parties.

15. After remand of the matter respondents/defendants have filed an application under Order 41 Rule 27 CPC as IA No.2 along with list of documents such as original registered partition deed

dated 06.05.1998, original registered sale deed dated 22.01.2003, copy of the registered sale deed dated 15.02.2006, copy of the gift deed dated 15.05.2017, mutation register extracts, computer RTC extracts, receipt patta and copy of the mortgage deed and encumbrance certificates with respect to the suit schedule property.

16. I have perused the materials placed on record and the judgment of trial Court. The plaintiffs are the children of defendant no.1. The suit schedule property originally formed part of the joint family property. In the family partition dated 06.05.1998, the suit schedule property fell to the share of defendant no.1. It is alleged that defendant no.1 without the knowledge and consent of plaintiffs executed sale deed in favour of defendant no.2 on 15.02.2006 in pursuant to an earlier sale agreement. Defendant no.2 in turn executed a gift deed in favour of defendant no.3 on 15.05.2017. Therefore, as the

suit schedule property was alienated without the knowledge of plaintiffs and they being co-parceners are entitled for their share in the suit schedule property. Hence filed a suit for partition dividing the suit schedule property by metes and bounds and claiming their legitimate share in the suit schedule property.

17. Though defendants remained absent from the proceedings before trial court, but before first appellate court, they have submitted petition under Order 41 Rule 27 CPC along with the documents without filing cross appeal. Respondents claimed that suit schedule property has been already alienated and there is no property available for partition. The trial Court dismissed the suit holding that the property obtained by defendant no.1 in partition is self-acquired property of defendant no.1 and he had absolute right to alienate the same.

18. In the earlier round of the litigation, this first appellate court allowed appeal by decreeing the suit of

plaintiff, but over sightly, an extra point of consideration was framed regarding additional documents under Order XLI Rule 27 CPC. This is typographical error committed by court while framing point No.2. There is no such petition filed by appellants nor any documents produced. Over-sightly the said point no.2 framed therefore no reason given for the said point no.2 in the judgment. Hon'ble High Court in the second appeal observed the said mistake and remanded the matter for fresh consideration.

19. On perusal of the records and verifying with both the counsel on record it is gathered that no such application U/o.41 Rule 27 of CPC filed by appellants and no documents were submitted. Subsequently defendants/respondents after remand of the matter submitted an application under Order 41 Rule 27 CPC as IA No.2 along with list of documents. The sale deed, sale agreement, partition deed, gift deed, mutation extracts,

RTC extracts and encumbrance certificates are produced along with the petition.

20. The documents sought to be produced by defendants are foundational documents such as partition deed, sale deed and revenue entries of suit property. These documents admittedly were in existence and within the knowledge of defendants at the time of the trial. The defendants have not filed their written statement nor adduced any evidence before the trial court. They have also not filed cross appeal for remand of the case for submitting written statement and adducing evidence in support of their case. The defendants have not shown that trial Court refused to admit the said documentary evidence or despite of due diligence such evidence could not be produced earlier by defendants before the trial Court. Thus the application does not satisfy the basic requirement under Order 41 Rule 27 CPC.

21. However considering that the documents are registered public documents and relevant for considering the suit on merits. They are necessary to effectively adjudicate the rights of the parties and avoid multiplicity of the proceedings. The original registered partition deed dated 06.05.1998 is admitted by plaintiff and regarding the said partition held in the joint family and allotment of the share in favour of defendant no.1 is admitted by plaintiffs in their pleading.

22. Further plaintiffs have also alleged that defendant no.1 alienated the suit property in favour of defendant no.2 through a registered sale deed without their consent. The said registered sale deed dated 15.02.2006 copy is furnished by defendants. It is pertinent to note that these are necessary documents which are required for effective adjudication and analyzing rights of the parties. They will help disposal of the case on merits. Therefore this Court is of the opinion

that the said documents can be received under Order 41 Rule 27 (1) (b) CPC. Accordingly the application is allowed and the documents are taken on record. Hence I answered point No.2 in Affirmative.

23. The plaintiffs admit that defendant no.1 acquired the suit schedule property through partition held in the family. Defendants also admit the said fact. It is argued by defendants counsel that defendant no.1 for the family necessity sold the said property received in partition in favour of defendant no.2 through registered sale deed.

24. The original sale agreement dated 22.01.2003 is produced by defendants, wherein it has been stated that defendant no.1 for the family necessities along with plaintiffs executed sale agreement in favour of defendant no.2 agreeing to sell suit schedule property within 3 years from the date of the said agreement. Subsequently, in pursuance to the said sale agreement, he executed a

registered sale deed in favour of defendant no.2 on 15.02.2006. Though plaintiffs were minor at the time of execution of the sale deed by their father in the year 2006, but after attaining majority they have not challenged the said sale deed executed by their father defendant no.1 in favour of defendant no.2. Instead they have filed suit for partition and separate possession seeking their legitimate share in the suit schedule property.

25. It is well settled that a co-parcner can challenge alienation made by the karta and seek partition. However, where a registered conveyance stand in the name of third parties, plaintiff must seek appropriate declaratory relief. In the absence of such relief, the alienation continues to hold and court cannot ignore duly executed registered documents.

26. In the present case, plaintiffs have sought relief only for partition and separate possession with respect to

suit schedule property. They have not laid any foundation to avoid or invalidate the sale deed and gift deeds. Therefore, the relief claimed is legally unsustainable as it ignores existing title documents. Plaintiffs have not sought for cancellation of said sale deed and gift deed executed by defendants with respect to suit schedule property. But plaintiffs must seek the relief of declaration that the sale deed executed by their father is not binding upon their share. Plaintiffs have not at all challenged the said sale deed and not sought for the relief of declaration as not binding upon their share.

27. Once the said sale deed and gift deed stands, title passed to defendant no.2 and then to defendant no.3. Therefore, without challenging the said documents, the court cannot ignore registered documents and relief of partition becomes legally inconsistent. Therefore though plaintiffs have showed that suit schedule property is joint family property held by them along with

defendant no.1, but defendant no.1 being karta of the joint family alienated the said suit schedule property in favour of defendant no.2 and executed an agreement in the year 2003 during the minority of plaintiffs and subsequently he executed a registered sale deed in favour of defendant no.2 through registered sale deed dated 15.02.2006. Though defendants have not come on record and not filed written statement explaining why karta alienated suit schedule property and what was necessity for alienation of the same, but plaintiffs have not sought for relief of declaration as discussed above.

28. From the pleadings and additional documents placed on record, the following facts stand establish that suit property was allotted to defendant no.1 in a partition in the year 1998. Defendant no.1 executed registered sale deed dated 2006 in favour of defendant no.2. Proceeded by agreement of sale agreement dated 22.01.2003. Defendant no.2 in turn executed registered gift deed in

favour of defendant no.3 in the year 2017. Revenue records and mutation entries reflect transfer of title in favour of defendant no.2 and 3. These transactions are registered conveyance and therefore carry presumption of validity unless set aside in accordance with the law.

29. On careful reading of plaint, it discloses that if plaintiffs assert that property is ancestral co-parcener property, they alleged defendant no.1 alienated property without their consent. However significantly there is no prayer for cancellation of said sale deed or any prayer of declaration that the said sale and gift deed are not binding on their shares. There is no specific pleadings of legal necessity or absence thereof nor any structured challenge to the alienation in legal terms. Thus the plaintiffs have sought to ignore alienation altogether while simultaneously claiming partition.

30. Plaintiff may challenge and avoid a transaction by seeking the relief of declaration or cancellation or he

can ignore it which is impermissible when the document affects title. Where a registered said deed stands, the court cannot proceed as if it does not exist. It is true that a co-parcener can challenge alienation made by the karta, particularly when it affects his share. However, the settled principle is, the co-parcener must seek a declaration that the alienation is not binding on his share without such prayer, the court has no occasion to adjudicate validity of the alienation and the document continues to operate fully. Registered sale deed and gift deeds, transfer legal title are binding until set aside cannot be nullified by mere oral assertion in the pleadings. Therefore, unless specifically challenged, such documents remain operative and enforceable. Therefore, a bare suit for partition without seeking to set aside or avoid these transfers becomes inherently defective. The relief of a partition that the property is available for division among the co-parceners. However in the present case the property stands alienated and vested in third

parties. Thus the relief sought is inconsistent with the existing title position. The court cannot grant the partitions of property while simultaneously recognize subsisting sale and gift deeds. The plaintiffs have not pleaded absence of a legal necessity or alienation have pleaded the absence of a legal necessity but not proved the same. The alienation was immoral and illegal purpose or that it was not for the benefit of the estates not explained nor proved. These essential pleadings to invalidate the kartha alienation. In absence of such pleadings no issue could be framed, no adjudication can be made. Therefore, the plaintiffs having failed to seek the appropriate relief to avoid or invalidate the said deed 2016 and a gift deed 2017 cannot maintain a suit for partition in respect of the suit property.

31. The alienation remaining unchallenged continues to bind the property and the relief of partition as sought is legally untenable. Though the trial Court

dismissed the suit of the plaintiff. The reasons given by the trial Court are not proper and correct, but the ultimate result of the dismissal of the suit is in accordance with the law, for the reasons assigned by this appellate court. Initially though this appellate court came to the conclusion that the suit schedule properties are the joint family properties and plaintiffs are having the right to seek partition in the said properties and allowed the appeal. But after considering the material placed by the defendants on record, this appellate court comes to the conclusion that plaintiffs failed to seek the relief of partition as claimed. Accordingly, I answer Point No.1 and 3 in Negative.

32. Point No.4:- In view of my findings on point No.1 and 2, I proceed to pass the following:

ORDER

Appeal filed by the appellant/plaintiff
under Order 41 Rule 1 and Sec.96 of
C.P.C is hereby dismissed.

Consequently I.A.No.II filed by appellant U/o.41 Rule 27 r/w.Sec.151 of CPC is hereby allowed.

The judgment and decree passed by the II Addl. Civil Judge and J.M.F.C, Chitradurga in O.S.No.336/2017 dated:13.09.2022 is hereby confirmed.

Draw decree accordingly.

Send the copy of the judgment along with TCR to the trial Court.

(Dictated to the Stenographer, transcription generated through computer by her. Verified by me and then signed and pronounced by me in the Open Court dated this the 06th day of April, 2026)

**(Smt. Ujwala Veeranna Siddannavar)
II Addl. Sr.Civil Judge and JMFC,
Chitradurga.**