

KAUK020006992014



**IN THE COURT OF THE ADDITIONAL SENIOR CIVIL JUDGE
AND JMFC, KARWAR, UTTARA KANNADA**

DATED THIS THE 11th DAY OF MARCH, 2026

**PRESENT : SRI. GANESHA PADIYAR U.,
B.Com. LL.B.**

Addl. Senior Civil Judge & JMFC.,
Karwar.

O.S. No.42/2014

- Plaintiffs :**
1. F.M.Sri Ganapati S/o Laxman Manjrekar
Age: 48 years, Occu: Private Service,
R/o: Kodibag, Tq: Karwar.
 2. F.M. Smt. Vishranti D/o Datta Tamse
@ Smt. Ahalya w/o Murali Padwalkar
Age: 72 years, Occu: Household,
R/o: Gotegali, Tq: Karwar.
 3. U.F.M. Sri Nanda S/o Narayan
Revandikar
Age: 57 years, Occu: Coolie,
R/o: Kodibag, Tq: Karwar.
 4. (U.F.M. Smt. Shashi Raghunath Arvekar
@ Smt. Laxmi Narayan Padwalkar
Age: 62 years, Occu: Household,
R/o: Gotegali, Tq: Karwar.) Dead. By LRs
 - 4.(a) Smt. Shraddha w/o Premanand
Padwalkar
Age: 47 years, Occ: Household,
R/o: Gotegali, Tq: Karwar.

- 4.(b) Sri Gajanan S/o Narayan Padwalkar
Age: 56 years, Occ: Agriculturist,
R/o: #2342B, Near Mahamayi Temple,
Gotegali, Tq: Karwar.
- 4.(c) Sri Manjunath S/o Narayan Padwalkar
Age: 39 years, Occ: Agriculturist,
R/o: H.No.234/2, Gotegali, Tq: Karwar.
- 4.(d) Smt. Pratiksha w/o Shyam Warkar
Age: 48 years, Occ: Household,
R/o: #2127, Tariwada, Kodibag,
Tq: Karwar.
- 4.(e) Smt. Mangala w/o Prashant Wagrekar
Age: 44 years, Occ: Household,
R/o: Gotegali, Tq: Karwar.

(By Sri M. L. Naik(H) Advocate)

- Vs -

- Defendants :**
1. (Smt. Saraswati w/o Ganapati Kalgutkar
Age: 52 years, Occ: Household,
R/o: Madyawada, Kodibag,
Tq: Karwar.) Died. Her LRs are already
on record as Defendant No.2 to 7
 2. Sri Venkatesh S/o Ganapati Kalgutkar
Age: 65 years, Occ: Coolie,
R/o: Madyawada, Kodibag, Tq: Karwar.
 3. Sri Ekanth S/o Ganapati Kalgutkar
Age: 62 years, Occ: Coolie,
R/o: Madyawada, Kodibag, Tq: Karwar.
 4. Sri Shashikanth S/o Ganapati Kalgutkar
Age: 60 years, Occ: Coolie,
R/o: Madyawada, Kodibag, Tq: Karwar.

5. Sri Maharudra S/o Ganapati Kalgutkar
Age: 58 years, Occ: Coolie,
R/o: Madyawada, Kodibag, Tq: Karwar.
6. Sri Ramesh S/o Ganapati Kalgutkar
Age: 55 years, Occ: Coolie,
R/o: Madyawada, Kodibag, Tq: Karwar.
7. Smt. Mukta D/o Ganapati Kalgutkar
Age: 40 years, Occ: Household,
R/o: Madyawada, Kodibag, Tq: Karwar.
8. (Sri Ramnath S/o Gangadhar Kalgutkar
Smt. Shakuntala Ramnath Kalgutkar
Age: 58 years, Occ: Household,
R/o: Madyawada, Kodibag, Tq: Karwar.)
(Died by LRs)
- 8.(a) Sri Rohit S/o Ramanath Kalgutkar
Age: 38 years, Occ: Private Service,
R/o: Suganga, 165/24,
Behind Rajeshwarwala Retreat,
Kesarwal, Cortalim, Goa-403701.
- 8.(b) Sri Soumit S/o Ramanath Kalgutkar
Age: 44 years, Occ: Private Service,
R/o: Suganga, 165/24,
Behind Rajeshwarwala Retreat,
Kesarwal, Cortalim, Goa-403701.
9. Sri Shivnath S/o Gangadhar Kalgutkar
Age: 50 years, Occ: Coolie,
R/o: Madyawada, Kodibag, Tq: Karwar.
10. Sri Dwarakanath S/o Gangadhar Kalgutkar
Age: 45 years, Occ: Coolie,
R/o: Madyawada, Kodibag, Tq: Karwar.

11. Sri Gurunath S/o Gangadhar Kalgutkar
Age: 44 years, Occ: Coolie,
R/o: Madyawada, Kodibag, Tq: Karwar.
12. Smt. Sulochana @ Anita D/o Gangadhar
Kalgutkar
Age: 42 years, Occ: Household,
R/o: Madyawada, Kodibag, Tq: Karwar.
13. Smt. Maya @ Shubhangi D/o Gangadhar
Kalgutkar
Age: 45 years, Occ: Household,
R/o: Madyawada, Kodibag, Tq: Karwar.
14. The State of Karnataka,
Represented by Deputy Commissioner
Karwar (UK)
15. The Superintendent of Police,
Karwar (UK)
16. Sri Kiran S/o Ganapati Bhandari
Age: 63 years, Occ: Business,
R/o: Near-Shetty Eye-Clinic, Tq: Karwar.
17. (Smt. Radha w/o Krishna Kalgutkar
Age: 68 years, Occ: Household,
R/o: Kodibag, Tq: Karwar.) Died by LRs
- 17.(a) Sri. Raghavendra S/o Krishna Kalgutkar
Age: 42 years, Occ: Private Service,
R/o: Madhewada, Kodibag, Tq: Karwar.
- 17.(b) Sri Vinayak S/o Krishna Kalgutkar
Age: 51 years, Occ: Business,
R/o: Madhewada, Kodibag, Tq: Karwar.
- 17.(c) Smt. Sandhya w/o Ravi Kumtakar
Age: 52 years, Occ: Household,
R/o: Madhewada, Kodibag, Tq: Karwar.

- 17.(d) Smt. Rajashri D/o Krishna Kalgutkar
Age: 43 years, Occ: Household,
R/o: Madhewada, Kodibag,
Tq: Karwar.
18. Sri Shamu S/o Pundlik Kalgutkar
Age: 59 years, Occ: Household,
R/o: Madyawada, Kodibag, Tq: Karwar.

(D-1 Dead)**LRs of D.1 is D.2 to D.7,****D.2 to D.7 by Smt. Sudha S. Rane Advocate****D.8(a) & D.8(b) Exparte****D.9 to D.13 by Smt. Ashwini M. Gouda
Advocate****D.14 & D.15 absent****D.16, D.17(a) to D.17(d) & D.18 by
Sri N. M. Madiwal Advocate)**

Date of institution of the suit : **09-09-2014**
Nature of the suit : **Partition**
Date of the commencement of
the evidence : **11-01-2017**
Date on which the judgment was
pronounced : **11-03-2026**

Total duration	:	<u>Year/s</u>	<u>Month/s</u>	<u>Day/s</u>
		11	06	02

(Ganesha Padiyar U)
Addl. Senior Civil Judge,
Karwar.

J U D G M E N T

This is a suit for Partition.

2. Case of the plaintiffs can be summarised as under:

The suit schedule properties were acquired by the Government for Police Department and thereafter they were reconveyed to the original owners. The suit schedule properties are ancestral and joint family properties of plaintiffs and defendants No.1 to 13 and 16 & 17. Preliminary Notification under Section 4(1) of the Land Acquisition Act was issued by the Government on 09.05.1974 in respect of those lands. Defendants No.1 to 13 have filed execution petition in Ex.No.290/2009 before this Court for enhancement of the compensation amount awarded in LAC Nos.1/79, 4/80, 5/80, 6/78 which were disposed of on 30.09.1988. The plaintiffs have no knowledge about the acquisition proceedings including the aforesaid Ex.No.290/2009. Defendants No.14 and 15 have retained some lands acquired pertaining to the joint family of plaintiffs

and defendants and some of the portion of lands were reconveyed to the original owners. Plaintiffs and defendants No.1 to 13, 16 and 17 are in joint possession and enjoyment of the suit schedule properties. No partition took place in respect of suit schedule properties till their acquisition. Defendants No.1 to 13 have denied the share of the plaintiffs over the amount of compensation and also the reconveyed suit schedule properties. This constrained to plaintiffs to bring this suit for partition claiming $\frac{1}{6}$ th share in the suit schedule properties.

3. After due service of suit summons, the defendants No.1, 2 to 7, 9 to 13, 16, 17(a) to (d) and 18 have appeared through their respective counsels. Defendants No.8(a) & (b), 14 and 15 have not appeared before this Court. Therefore, they have been placed exparte.

4. During the pendency of the suit, defendant No.1 died and his LRs are ordered to be on record as defendants No.2 to 7 who are already on record.

5. Defendants No.2, 3, 4, 6 and 7 have filed common written statement contending that the claim of the plaintiffs is contrary to law and true facts of the case. They have contended that the suit is not maintainable as no notice under Section 80 CPC has been given to the Government and its officers who are defendants No.14 and 15. It is contended that the lands stated by the plaintiffs are acquired by the State Government for the benefit of Police Department. When the suit lands are stated to be acquired by the Government for the use of Police Department, no suit for partition is maintainable. They have also denied the relationship and genealogy as mentioned in the plaint. It is further contended that the plaintiffs No.2 and 4 being married daughters, are not entitled to any share in the suit schedule properties. They have further contended that there was an earlier partition in respect of suit schedule properties and the same have been mutated. Therefore, unless the previous partition is challenged this suit for partition is not maintainable. It is denied that the plaintiffs are members of the alleged joint family or that they were in joint possession, enjoyment and

cultivation of the suit schedule properties at any point of time either before or after the acquisition of lands. It is also contended that the suit is barred by law of limitation.

6. It is further contended that the original owners of the properties was one Shri Babu Ram Bhandari @ Kalgutkar who had a son by name Shri Venkatesh Babu Bhandari @ Kalgutkar who died leaving behind him three sons and four daughters namely 1) Ganapati 2) Gangadhar 3) Babu and daughters by name 1) Yamuna 2) Krishni 3) Ubaga 4) Kaveri. The son Babu died issueless as bachelor. The daughters were all born much prior to 1956. They were also married and residing with their husbands happily much prior to 1945. Therefore, they ceased to be the members of their parental joint family as per the law of inheritance under the Hindu Law as well as under the Karnataka Land Reforms Act. The suit schedule properties were legally partitioned between the sons of Shri Venkatesh namely Shri Ganapati, Shri Venkatesh Kalgutkar and Shri Gangadhar Venkatesh Kalgutkar. Accordingly, the revenue records have been legally mutated in their respective names. It is further contended that the suit

is bad for law of limitation. Denying all other plaint averments, the above defendants have sought for dismissal of the suit with heavy costs.

7. Defendant No.15 has filed written statement contending that the suit is contrary to law and true facts of the case and the suit schedule properties were acquired by the Government under the Land Acquisition Act and entire compensation has also been deposited before the Court. It is contended that as per the records and notification award has been passed in respect of the acquired lands. After acquisition the Police Department has constructed building in the acquired lands. The defendant No.15 is in possession and enjoyment of the land. It is also contended that the defendants have perfected their rights by way of adverse possession. With these defendant No.15 has sought for dismissal of the suit with costs.

8. Defendants No.2 to 7 have filed additional written statement contending that the plaintiffs are not the members of Hindu Joint Family and therefore, they are not entitled to

any share in the suit schedule properties. They have further contended that defendant No.1 was independently cultivating the land bearing R.S.No.193/3 totally measuring 15 guntas. He filed application in Form No.7 for grant of occupancy rights. The Land Tribunal, Karwar vide its order dated 14.03.1979 granted the said land in favour of Shri Ganapati S/o Venkatesh Kalgutkar, the husband of defendant No.1 and the father of defendants No.2 to 7 and accordingly, his name came to be entered in the revenue records. The said order passed by the Land Tribunal remained unchallenged. Therefore, the said Shri Ganapati S/o Venkatesh Kalgutkar became the absolute owner of the said property. After his death, the defendants No.1 to 7 have become the absolute owners of the said property.

9. Based on the rival pleadings, my learned Predecessor-in-office has framed the following:

ISSUES

1. Whether the plaintiffs prove that all the suit schedule properties were belonging to the ancestors of plaintiffs and defendants No.1 to 13?

2. Whether the plaintiffs further prove that the plaintiffs and defendants No.1 to 13 were in joint possession of the suit schedule properties as members of Hindu Joint Family?
3. Whether the defendants No.2,3,4,6 & 7 prove that there was earlier partition as contended at para 6 of written statement?
4. Whether the defendants No.2,3,4,6 & 7 further prove that the suit is barred by limitation?
5. Whether the plaintiffs are entitled for partition and separate possession of 1/6th share in the suit schedule properties by metes and bounds?
6. Whether the plaintiffs are entitled for 1/6th share in suit schedule Sl.No.5 & 6 of the properties?
7. Whether the plaintiffs are entitled for 1/6th share in the compensation amount paid by the Government for the acquired suit land?
8. What order or decree?

10. To prove their case, the plaintiff No.2 has examined herself as PW.1 and got marked the documents as Ex.P.1 to Ex.P.27. On the other hand, the defendant No.7 has examined himself as DW.1 and got marked the documents as Ex.D.1 & Ex.D.2.

11. I have heard the arguments of both sides.

12. I have gone through the written arguments filed by learned counsel for defendants No.2 to 7.

13. I have perused the entire materials on record.

14. My findings are as under :

<i>Issue No.1</i>	:	<i>Affirmative</i>
<i>Issue No.2</i>	:	<i>Affirmative</i>
<i>Issue No.3</i>	:	<i>Negative</i>
<i>Issue No.4</i>	:	<i>Negative</i>
<i>Issue No.5</i>	:	<i>Affirmative</i>
<i>Issue No.6</i>	:	<i>Affirmative</i>
<i>Issue No.7</i>	:	<i>Negative</i>
<i>Issue No.8</i>	:	<i>As per final order</i>

for the following:

REASONS

15. **ISSUES NO.1 AND 2:** Since these issues are intrinsically interconnected, they are taken together for discussion.

16. A woodcut of the fact first.

17. This is a suit for partition filed by the plaintiffs claiming $\frac{1}{6}$ th share each in the suit schedule properties on the premise that the suit schedule properties are ancestral and joint family properties. Defendants No.2 to 7 and 15 have only contest the suit. No doubt true that the defendants have denied the claim of the plaintiffs solely on the ground that they are the children of married daughters and therefore they do not come within the purview of the definition of 'family' as provided under Section 2(12) of the Karnataka Land Reforms Act, 1961 and therefore the plaintiffs cannot claim any share in the suit schedule properties.

18. Since I have narrated the gist of the case and contention of the parties hereinabove, it does not call for reiteration.

19. It is an admitted fact that the lands belonging to the joint family of plaintiffs and defendants No.1 to 13 and 16 & 17 were acquired by the Government for the benefit of Police Department and the suit schedule properties involved in the present suit are the only properties which are now in the joint family of the plaintiffs and defendants referred to above as the said properties were reconveyed by the Government after their acquisition.

20. Description of suit schedule properties is as follows:

Sl. No.	Sy.No.	Area	Village	Taluk
1.	4/1	2-4-0	Kodibag	Karwar
2.	4/2	0-15-0	do	do
3.	4/3	1-8-0	do	do
4.	4/4	1-16-0	do	do
5.	193/3	0-15-0	do	do
6.	193/4	0-5-0	do	do

21. For ease of understanding, the position of the parties is demonstrated through the following genealogy:



22. The genealogical relation between the parties is not in dispute.

23. It is admitted position that the parties namely the plaintiffs and defendants are the family members. Though the defendants have contended that the plaintiffs are strangers to their family, there is no iota of evidence being led by the defendants to contend so. Therefore, the relationship of the parties as narrated in the plaint as well as the genealogy shown above has to be accepted.

24. Equally it is true that the Land Tribunal, Karwar had granted occupancy rights in respect of land bearing Sy.No.193/3, Sy.No.4/3 situated at Kodibag Village of Karwar Taluk in pursuance of the application given in Form No.7 before the Land Tribunal, Karwar for grant of occupancy rights in favour of Shri Ganapati Venkatesh Kalgutkar and Shri Gangadhar Venkatesh Kalgutkar. The certified copy of order passed by the Land Tribunal on 14.03.1979 is at Ex.D.1. It is also seen that occupancy certificate in Form No.10 came to be issued in their favour, the certified copy of which is marked as Ex.D.2.

25. To prove their case, the plaintiff No.2 Smt. Vishranti has examined herself as PW.1 and got marked as many as twenty-seven documents as Ex.P.1 to Ex.P.27. She has filed affidavit in lieu of examination-in-chief reiterating everything that is stated in the plaint.

26. Before advertng to the oral evidence of PW.1, at the outset, let me examine the documents relied upon by the plaintiffs.

27. Ex.P.1 is the RTC extract in respect of land bearing Sy.No.4/1 measuring 2.04.00.00 situated at Kodibag Village of Karwar Taluk which stands in the name of Police Department. Ex.P.2 is the RTC extract in respect of land bearing Sy.No.4/2 measuring 0.15.00.00, Ex.P.3 is the RTC extract in respect of land bearing Sy.No.4/3 measuring 1.08.00.00, Ex.P.4 is the RTC extract in respect of land bearing Sy.No.4/4 measuring 1.16.00.00, all of which stand in the name of Police Department.

28. Ex.P.5 to Ex.P.8 are the certified copy of RTCs. Ex.P.9 to Ex.P.13 are the certified copies of Record of Rights. Ex.P.14 is the certified copy of Judgment passed by the Court of Civil Judge, Karwar in LAC No.1/1979, LAC No.4/1980, LAC No.5/1980 and LAC No.6/1978. Ex.P.15 is the certified copy of Award. Ex.P.16 & Ex.P.17 are the RTC extracts. Ex.P.18 is the certified copy of IA No.17 filed in O.S No.212/2011. Ex.P.19 is the certified copy of IA No.18 filed in O.S No.212/2011. Ex.P.20 to Ex.P.25 are the Mutation Register extracts. Ex.P.26 is the Order-sheet in LAC

Ex.No.290/2009. Ex.P.27 is the certified copy of IA No.8 filed in Ex.No.290/2009.

29. I have carefully perused each and every documents relied upon by the plaintiffs as detailed above.

30. I have gone through the entire cross-examination of PW.1. Despite thorough cross-examination she stood to ground. Rather PW.1 has been categoric in mentioning that the suit schedule properties were the tenanted lands which were cultivated by them even during the lifetime of their father. This is evident from the very suggestion put to PW.1 in her cross-examination by the learned counsel for defendants No.9 to 13. The suggestion reads as under:

“ನಿಮ್ಮ ತಂದೆ ಜೀವಂತ ಇರುವಾಗ ನೀವು ಹಾಗೂ ನಿಮ್ಮ ಸಹೋದರ ಸಹೋದರಿಯರು ಸೇರಿ ಜಮೀನನ್ನು ಸಾಗುವಳಿ ಮಾಡುತ್ತಿದ್ದೆವು ಎಂದರೆ ಸರಿ. ದಾವಾ ಜಮೀನು ಹೊರತುಪಡಿಸಿ ಬೇರೆ ಜಮೀನುಗಳು ಇದ್ದವು ಎಂದರೆ ಸರಿ. ನಿಮ್ಮ ತಂದೆಯ ಜೀವಿತಾವಧಿಯಲ್ಲಿ ನಿಮ್ಮೊಳಗೆ ಸದರಿ ಜಮೀನುಗಳ ಬಾಬು ವಿಭಾಗ ಆಗಿರುವುದಿಲ್ಲ ಎಂದರೆ ಸರಿ. ಇನ್ನು ಕೆಲವು ಜಮೀನುಗಳು ಪೋಲಿಸರ ವಸತಿ ಗೃಹಕ್ಕೆ ಭೂ ಸ್ವಾಧೀನಗೊಂಡಿರುತ್ತದೆ ಎಂದರೆ ಸರಿ. ಅದಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ ಪರಿಹಾರ ಪಡೆದುಕೊಂಡಿದ್ದು ಇದೆ ಎಂದರೆ ಸಾಕ್ಷಿ ನಾವು ಪಡೆದುಕೊಂಡಿಲ್ಲ ಅಂತಾ ಉತ್ತರಿಸುತ್ತಾರೆ. ಸದ್ರಿ

ಜಮೀನುಗಳಲ್ಲಿ ನಿಮಗೂ ನಿಮ್ಮ ಸಹೋದರ ಸಹೋದರಿಯರಿಗೂ
ಹಾಗೂ ಅವರ ವಾರಸುದಾರರಿಗೆ ಸಮಾನ ಹಿಸ್ಸೆ ಇದೆ ಎಂದರೆ ಸರಿ. ”

31. In addition to the above, PW.1 has subjected to cross-examination by the learned counsel for defendants No.2 to 7. Of course in the cross-examination, PW.1 could not give proper answers to certain questions. However, she denies the suggestion that she does not belong to the family of Kalgutkar.

32. So, on careful perusal of the entire cross-examination of PW.1, it shows that she stood to ground and nothing worth could be elicited so as to discredit her version.

33. On the other hand, defendant No.7 by name Miss Mukta has examined herself as DW.1. She has filed affidavit in lieu of examination-in-chief reiterating everything that is stated in the written statement. She got marked two documents as Ex.D.1 & Ex.D.2 in her deposition. I have already narrated with respect to these two documents.

34. Ex.D.1 is the certified copy of Order dated 14.03.1979 passed by Karwar Land Tribunal granting

occupancy rights in respect of tenanted lands. A perusal of the said Order discloses that Shri Ganapati Venkatesh Kalgutkar and Shri Gangadhar Venkatesh Kalgutkar had filed application in Form No.7 before the Land Tribunal for grant of occupancy rights in respect of those lands and in pursuance of their application the occupancy rights were conferred in their favour.

35. Ex.D.2 is the certified copy of occupancy certificate in Form No.10 issued by the Tahasildar, Karwar in pursuance of Ex.D.1.

36. I have carefully gone through the cross-examination of DW.1.

37. In the cross-examination, DW.1 admits that one Mr. Venkatesh Babu Bhandari is the propositus of their family. She admits that Smt. Ratna Bhandari is his wife. She also admits that he had three male and four female children who are namely Babu, Gangadhar and Ganapati. Babu died unmarried. Female children are: Yamuna, Kaveri, Krishni, Ubaga. Yamuna has a son Laxman. The 1st plaintiff Ganapati

is the son of the aforesaid Laxman. She admits that the second plaintiff Vishranti is the daughter of Kaveri. She also admits that the 3rd plaintiff Mr. Nanda is the son of Smt. Krishni. She also admits that the 4th plaintiff Smt. Shashi is the daughter of Smt. Ubaga.

38. Notably, DW.1 has answered that the written statement filed on her behalf in this suit is not based on the instruction given by her to their counsel. The specific answer given by DW.1 reads thus:“ಈ ಮೇಲೆ ಹೇಳಿದ ಕುಟುಂಬದ ಸದಸ್ಯರ ಸಂಬಂಧವನ್ನು ಒಪ್ಪಿಕೊಂಡು ಲಿಖಿತ ತಕರಾರನ್ನು ಸಲ್ಲಿಸಲು ತೊಂದರೆ ಇರಲಿಲ್ಲ ಎಂದರೆ ಸರಿ.”

39. Thus, it is clear that the contention of the contesting defendants in their written statement denying the relationship of the parties to be incorrect is without any substance and the said contention is not acceptable in view of the categorical admission by DW.1 in her cross-examination.

40. Proceeding further, it is to be noted that DW.1 admits that a suit O.S No.212/2011 filed for partition of item No.5 & 6 of the suit schedule properties came to be decreed.

She admits that the said judgment and decree was carried in appeal and the matter was remanded for trial afresh. She admits that after remand the defendants in that suit have applied for including item No.1 to 4 properties in the said suit.

41. DW.1 has clearly admitted that the suit schedule properties are ancestral properties. The admission given by DW.1 in her cross-examination reads as under:

“ಈ ದಾವೆಯ ದಾವಾ ಆಸ್ತಿಗಳು ಪಿತ್ತಾರ್ಜಿತವಾಗಿ ಬಂದ ಆಸ್ತಿಗಳು
ಎಂದರೆ ಸರಿ.”

42. Thus, DW.1 has clearly and unequivocally admitted that the suit schedule properties are ancestral properties. Then, what more is required to arrive at such a conclusion.

43. In the cross-examination, DW.1 has specifically mentioned that only 8 guntas of land was acquired in view of the Notification which is covered in LAC No.4/1980. She states that in Sy.No.4/3, the said 8 guntas of land has been acquired. DW.1 further admits that the rest of the lands are in possession of their family members. Therefore, it is clear that

except the 8 guntas of land in Sy.No.4/3, all the suit schedule properties are in joint possession and enjoyment of their joint family.

44. The learned counsel for the plaintiffs has argued that the suit schedule properties are the ancestral and joint family properties which were originally belonged to the propositus of the joint family by name Shri Venkatesh Kalgutkar and the contention of the defendants that the married daughters cannot claim any share in the occupancy holdings of the deceased propositus cannot be countenanced. In support of his arguments, he has relied upon the following decisions:

- 1) (2022) 8 SCC 261
Somakka (Dead) by LRs vs K. P. Basavaraj (dead)
by LRs.
- 2) 2022(4) KCCR 3076 (DB)
Girija and Others vs Ramanagouda and Others.
- 3) RFA No.100149 of 2014 (PAR/POS)
Sri Arvind and Another vs Smt Sunanda and Others
- 4) RFA No.100305 of 2019 (PAR/POS)
Balappa @ Balachandra Bhovi Since deceased
by LRs and Others vs Smt. Yallowwa Bhovi @
Jatbhovi and Others

5) 2013(4) KCCR 3266 (DB)

Sri Chennappa Moolya vs Seju Moolya and Others

45. It is to be noted that despite sufficient opportunities, no oral arguments are addressed on behalf of the defendants. However, written arguments is filed by the learned counsel for defendants No.2 to 7 in view of the liberty granted by this Court. I have gone through the said written arguments.

46. I have gone through the decisions that are cited by the learned counsels appearing for the plaintiffs.

47. In addition to the above, it is to be noted that the Hon'ble Apex Court in the case of ***Sangappa Kalyanappa Bangi vs Land Tribunal, Jamkhandi*** reported in **(1998) 7 SCC 294**, at para 5, it is held as follows:

"5. This case gives arise to a difficult and doubtful question, whether a devise under a Will would amount to an assignment of interest in the lands and, therefore, would be invalid under the provisions of Section 21 of the Land Reforms Act. What is prohibited under Section 21 of the Act is that there cannot be any sub-division or sub-letting of the land held by a tenant or assignment of any interest thereunder. Exception thereto are when the tenant dies, the surviving members of the joint family and if he is not a member of the joint family, his heir shall be entitled to partition and sub-divide the land leased subject to certain conditions. Section 24 of the Act declares that when a

tenanted dies, the landlord is deemed to continue the tenancy to the heirs of such tenant on the same terms and conditions on which the tenant was holding at the time of his death. We have to read Section 21 with Section 24 to understand the full purport of the provisions. Section 24 is enacted only for the purpose of making it clear that the tenancy continues notwithstanding the death of the tenant and such tenancy is held by the heirs of such tenant on the same terms and conditions on which he had held prior to his death. The heirs who can take the property are those who are referable to in Section 21. If he is a member of the joint family, then the surviving members of the joint family and if he is not such a member of a joint family, his heirs would be entitled to partition. Again, as to who his heirs are will have to be determined not with reference to the Act, but with reference to the personal law on the matter. The assignment of any interest in the tenanted land will not be valid. A devise or bequest under a Will cannot be stated to fall outside the scope of the said provisions inasmuch as such assignment disposes of or deals with the lease. When there is disposition of rights under a Will, though it operates posthumously is nevertheless a recognition of the right of the legatee thereunder as to his rights of the tenanted land. In that even, there is an assignment of the tenanted land, but that right will come into effect after the death of the testator. Therefore, though it can be said in general terms that the devises simpliciter will not amount to an assignment, in a special case of this nature, interpretation will have to be otherwise."

48. Our Hon'ble High Court in the case of ***Nagappa S/o Jatta Naik vs Smt. Mahadevi W/o Manjunath Naik [RSA No.100164 of 2018 (PAR) DD: 21.06.2024]***, it is held that the married daughters are also entitled for partition in the tenanted lands, by referring to various judgments of the

Hon'ble Supreme Court and it was held that married daughters are also entitled for partition in the suit properties, the tenanted lands and Civil Court has jurisdiction.

49. The Division Bench of our Hon'ble High Court in the case of **Sri Arvind and Another vs Smt. Sunanda and Others** [RFA No.100149/2014 DD: 13.01.2020], has observed as follows:

“ 25. In order to pursue their contentions as stated above, the defendants relied upon the judgment of Division Bench of this Court in the case of *Nimbavva and Others vs Channaveeraya* and Others reported in ILR 2013 KAR 6202 to contend that the daughters who were married were not entitled to succeed to tenanted property. The facts of the case on hand and the facts of the case that were involved in *Nimbavva's case* (referred supra) are completely different. In the cited case, the propositus died on 04. 01. 1974 i. e. , prior to 01. 03. 1974, which was the appointed date under the KLR Act. One of the sons of the original tenant sought and obtained occupancy rights in respect of the land. It was therefore, pointed out in the cited judgment that the person, who was registered as an occupant became the absolute owner as the married daughters were not entitled to seek occupancy rights as they were not members of a family.

26. In the case on hand, the property in question was admittedly cultivated by Sri Narasimha Venkatesh Kamat as a tenant and he filed an application seeking grant of occupancy rights and the occupancy rights were indeed granted to Sri Narasimha Venkatesh Kamat. Thus, the lands that vested in the Government were divested in favour of Sri Narasimha Venkatesh Kamat thus creating

a fresh right, title and interest and therefore, these lands became the absolute properties of Sri Narasimha Venkatesh Kamat. He having died intestate on 01. 04. 1989, there cannot be any doubt that his successors, who are the plaintiffs and the defendants No. 1 to 6 are entitled to an undivided $\frac{1}{9}$ th share in the suit schedule properties by operation of Section 8 of the Hindu Succession Act. The defendant Nos. 2 and 3/ appellants herein were unable to show any provision in the KLR Act that determined the succession of the lands in question after the death of Sri Narasimha Venkatesh Kamat. As a matter of fact, there is no provision delineating the mode of succession to the lands that are conferred on tenants under the KLR Act and the only substantive provision that determines succession to such a properties is section 8 of the Hindu Succession Act, 1956, which is a central legislation.

27. The reliance of defendant No. 3 on section 4(2) of the Hindu Succession Act to contend that the provisions of the said Act would not affect the provisions of any law for the devolution of tenancy rights in respect of such holdings. It is to be noted that section 4(2) of the Hindu Succession Act was omitted with effect from 09.09.2005 and the present suit is filed in the year 2011. In addition, the relief sought for in the suit is not regarding the devolution of tenancy rights but relates to partitioning of an estate subsequent to confirmation of rights of tenancy. Therefore, this argument too does not take the case of the defendants any forward.”

50. The Division Bench of our Hon'ble High Court, subsequently in the judgment reported in **2022(4) KCCR 3076 (DB)--Girija and Others vs Ramanagouda and Others**, referring to Section 2(12) of the Karnataka Land

Reforms Act and Section 6 and 8 of the Hindu Succession Act, 1956, observed and held as follows:

“17. In the case on hand, there is no dispute with respect to the relationship of the parties. Basavanagouda has three sons and three daughters. The sons are major and the daughters are married. In view of the definition of ‘family’ under Section 2(12) of KLR Act, they are excluded. Plaintiff Nos.1, 2 and 3 are seeking their rights under Shivanagouda, who is one of the sons of Basavanagouda Honagouda Patil. Under these circumstances, the partition has to be effected under Sections 6 and 8 of Hindu Succession Act. Considering the same, the trial Court was justified in passing the impugned judgment and decree. Therefore, there is no error in the judgment and decree passed by the trial Court. The appellants have not made out any ground to exercise the power under Section 96 of CPC. Hence, the points are answered accordingly.”

51. In yet another judgment relied upon by the learned counsel for the plaintiffs in the case of ***Balappa @ Balachandra Bhovi Since deceased by his LRs vs Smt. Yallawwa Bhovi @ Jatbhovi and Others*** [RFA No.100305 of 2019 (PAR/POS), DD: 07.01.2025], the Division Bench of our Hon’ble High Court has observed and held as follows:

“28. It is the case of the defendants that, the plaintiffs are the married daughters and they are not entitled to claim a share in the suit schedule properties, as the properties were the granted lands. The plaintiffs are the married daughters. They do not fall within the definition of “family”, as defined under sub-section (12) of Section 2 of the Karnataka Land Reforms Act. The said issue was considered by the Coordinate Bench of this court in RFA No. 100149/ 2014 disposed of on 13.01.2020 between *Sri Aravind and Another vs Smt. Sunanda and Others*. The said issue was followed by the Division Bench of this court in RFA No. 100189/ 2020 wherein it is held that, there cannot be any doubt that the grantee's successors, who are the plaintiffs and defendants, are entitled to an undivided share and the defendants were unable to show any provision in the KLR Act, that determined, the succession of land in question after the death of grantee. As a matter of fact, there is no provision delineating the mode of succession to the lands that are conferred on tenants under the KLR Act. The judgment passed in RFA No. 100149/ 2014 is aptly applicable to the present case on hand. We concur with the findings rendered by the Co-ordinate Bench of this court in RFA No. 100149/ 2014. In view of the law laid down by this court in RFAS No. 100149/ 2014, the married daughters are entitled to a share in the granted lands. The plaintiffs being the daughters of Bhimappa, they are coparceners, as per Section 6 of the Hindu Succession Act, they are entitled for a share in the suit schedule properties. The defendants have failed to prove that the plaintiffs are not entitled to

claim a share in the suit schedule properties, as per Section 2(12) of the Karnataka Land Reforms Act. In view of the above discussion, we answer point No. (ii) in the negative.”

52. Apart from the above decisions, and in view of the decisions of Hon'ble Apex Court reported in AIR 2022 SC 2853—Somakka(Dead) by LRs vs K. P. Basavaraj (Dead) by LRs as well as the judgments of our Hon'ble High Court in AIR Online 2023 KAR 715—Ishwar vs Jattamma @ Mastamma Kom Manjappa Naik and judgment in RSA No.100608/2019 DD: 26.09.2024—Vishnu S/o Irappa Ilager and Others vs Smt. Buddavva W/o Yallappa Ilager and Others and in view of the recent judgment of our Hon'ble High Court in RSA No.100060 of 2021 (PAR) DD: 26.06.2025—Suresh S/o Babi Naik vs Shalini @ Subhada daughter of Babi Naik and Others, the issue whether daughters married prior to the grant of land under the Karnataka Land Reforms Act are entitled to a share is well settled and the said question is no longer *res integra* and therefore it is well settled that the married daughters are entitled to a share in the tenanted lands.

53. Therefore, the provisions of the Karnataka Land Reforms Act, 1961 cannot be pressed into service to negate the claim of the plaintiffs herein. Therefore, the suit properties involved in the present suit being the tenanted lands to which the occupancy rights were conferred by the Land Tribunal in pursuance of application for such grant made by the tenants, who died intestate, have to devolve upon the surviving legal heirs in accordance with the provisions of Hindu Succession Act, 1956 and not as per the provisions of Karnataka Land Reforms Act, 1961 as contended by defendants No.1 to 5.

54. Thus, the only conclusion is that, the plaintiffs being the children and the legal heirs of married daughters of the propositus, are entitled to a share in the suit schedule properties and therefore, they cannot be non-suited on the ground that the married daughters are excluded from the 'family' definition under Section 2(12) of the Karnataka Land Reforms Act.

55. In the light of the above legal position, and on careful appreciation of the entire material on record

including the oral as well as documentary evidence tendered by both the parties, this Court is of the view that the suit schedule properties are ancestral and joint family properties of both plaintiffs and defendants. It is also evident that the plaintiffs and defendants No.1 to 13 are the members of Hindu undivided joint family and they are in joint possession, enjoyment of the suit schedule properties. Further, the suit schedule properties are the lands which have been reconveyed after the acquisition and therefore, they are partible and available for partition. Hence, in view of all these, I answer Issues No.1 and 2 in the **“Affirmative”**.

56. **ISSUE NO.3:** Defendants No.2 to 7 have contended in their written statement that there was an earlier partition in respect of the suit schedule properties and therefore, the suit schedule properties cannot be partitioned as claimed by the plaintiffs.

57. Notably, the defendants have not produced any iota of evidence to show that such a partition had taken place as contended by them.

58. It is to be noted that absolutely there is no suggestion put to PW.1 to the effect that any such previous partition took place in their family.

59. In the cross-examination, it is elicited from DW.1 that in her written statement it is contended that there was a partition between her father and her brothers. She states that the said partition took place in the year 1974. DW.1 has further deposed thus: “ಆ ರೀತಿ ಆಗಿತ್ತು ಎನ್ನಲಾದ ವಾಂಟಣಿಯು ತೊಂಡಿ ವಾಂಟಣಿಯೋ ಅಥವಾ ಲಿಖಿತ ನೊಂದಾಯಿತ ವಾಂಟಣಿಯೋ ಎಂದರೆ ಸಾಕ್ಷಿ ಕಾಗದ ಪತ್ರದ ಪ್ರಕಾರವೇ ಆಗಿದೆ ಎಂದು ಉತ್ತರಿಸುತ್ತಾರೆ. ಆ ರೀತಿ ಕಾಗದ ಪತ್ರದಲ್ಲಿ ಆಗಿದೆ ಎನ್ನಲಾದ ವಾಂಟಣಿಯು ಸಬ್ ರಿಜಿಸ್ಟ್ರಾರ್ ಕಚೇರಿಯಲ್ಲಿ ನೊಂದಣಿ ಆಗಿದೆಯೇ ಎಂದರೆ ಸಾಕ್ಷಿ ಇಲ್ಲಾ ಅಂತಾ ಉತ್ತರಿಸುತ್ತಾರೆ.”

60. From the answers elicited from DW.1 above, it is clear that according to her, the previous partition was effected on papers. However, no such document is produced to prove the said partition. The defence of the defendants that there was a partition between their father and his

brothers. Nothing is produced to prove that there was a prior partition. DW.1 mentions that the said partition effected on papers was not registered.

61. Law is well settled that as per Section 17 of the Registration Act, 1908, in order to transfer the immovable property, the market value of which is more than Rs.100/-, it requires compulsory registration.

62. Proceeding further, in the cross-examination DW.1 admits that the suit schedule properties were not included in the previous partition. She also admits that there is no reference with regard to the alleged previous partition in documents that are marked as Ex.P.1 to Ex.P.11. DW.1 also admits that her father did not take any properties under the said prior partition.

63. Though DW.1 states that the earlier partition had been mutated in the revenue records, no such mutation register extracts are produced by her.

64. The learned counsel for the plaintiffs has relied upon a Division Bench Judgment of our Hon'ble High Court

reported in **2013(4) KCCR 3266 (DB)--Sri Chennappa Moolya vs Seju Moolya and Others**, it is held that “in the absence of credible documentary and oral evidence plea of partition cannot be accepted.”

65. Our Hon'ble High Court in the case of **Mallappa S/o Shankrappa Waggannavar and Others vs Maruti S/o Shankrappa Waggannavar and Others [RSA No.5115 of 2013 (PAR)]** DD: 02.08.2022, has held as follows:

“22. First appellate Court upon re-examination of evidence on record and reasons assigned by trial Court proceeded to confirm findings and dismissed appeal. It observed that though defendants no.1 to 4 contended in the written statement that there was prior partition in the year 1988, no evidence was led to substantiate the same. Ex.P.1 to 13 record of rights clearly establish that names of plaintiff and defendants were entered jointly in respect of suit properties upto filing of suit. None of suit properties were standing in exclusive name of any parties and specific extent were not mentioned against their names, which indicated that there was no prior partition. It also referred to contradiction in deposition of defendant-witnesses with written statement averments. In

view of the same, it proceeded to concur with the findings of trial Court.

23. Though, learned counsel for defendants no.1 to 4 strained himself to contend that judgment and decree passed by both courts was contrary to evidence on records, he was unable to point to any evidence to establish prior partition in the year 1988 despite prior partition being their main ground for opposing suit claim. Both Courts after due consideration of the evidence on record have arrived at finding that there was no prior partition between the parties. Admittedly, defendants no.1 to 6 and mother of defendants no.7 to 11. In view of amended Section 6 of Hindu Succession Act, all of them would be entitled to equal share in suit properties. Therefore, neither of the Courts committed any error in decreeing 1/8th share to plaintiff. There is neither any perversity nor capriciousness with the findings. Hence, no substantial question of law as proposed would arise for consideration.”

66. Hence, the above decision would say that the defence of prior partition becomes weak when revenue entries do not stand separately and exclusively in the name of the family members.

67. It is also beneficial to refer a judgment of Hon'ble Apex Court in the case of ***Shiromani and Others vs Hem Kumar and Others reported in 1968 SCC OnLine SC 243***, wherein it is held as under:

"9. On behalf of the respondents reference was made to the evidence of DW 1 Dinamoni and DW 2 Dindayal that there was an actual partition of joint family properties not on December 27, 1943 when Ex.D-4 was executed but about two months later and specific allotments were made to each of the coparceners. There is, however, no pleading in the Written Statement on behalf of the respondents that apart from the document, Ex.D-4 there was a partition of the joint family properties. We are satisfied in this case, upon examination of the evidence, that the intention of the parties was that document Ex.D-4 should be the sole evidence of partition and since we have held that Ex.D-4 is not admissible in evidence on account of non-registration to establish when the property was so partitioned, it is manifest that no oral evidence is admissible to prove any subsequent partition having regard to the provisions of s.91 of the Evidence Act. It is clear therefore that the appellants are entitled to a preliminary decree for partition of joint family properties."

68. In view of the above decisions, in the case on hand, as already noticed, the defendants have not produced any iota of evidence to establish the factum of prior partition.

Though DW.1 has stated that there is document to show that there was prior partition, no such document has been produced by the defendants. Further, the document purported to be the prior partition is unregistered one as elicited from the cross-examination of DW.1. Even if the said unregistered document is produced also, it would be of no avail to the defendants since the document itself is inadmissible in evidence in view of its non-registration.

69. Except the *ipse dixit* of oral testimony of DW.1, no iota of evidence is led by the defendants to substantiate their plea of prior partition. Therefore, it is clear that the defendants have failed to establish the defence set up by them in that regard. Therefore, the contention of defendants No.2 to 7 with respect to the prior partition has to be eschewed from consideration. Pertinently, in the case on hand, rest of the contesting defendants also did not mount box and none have been examined on their behalf.

70. Thus, it can be safely concluded that the defendants have miserably failed to establish that there is a prior

partition as contended by them. Hence, I answer Issue No.3 in the “**Negative**”.

71. **ISSUE NO.4:** Next comes the question, whether the suit is barred by law of limitation. At the outset, this Court is of the view that the contention raised by defendants No.2 to 7 in their written statement in that regard is sans substance. Because, admittedly this is a suit for partition claiming a share in the ancestral and joint family properties. When that being the situation, there cannot be any limitation to bring the suit for partition claiming a share in joint family properties.

72. Furthermore, Our Hon’ble High Court in ***RSA No.177/2021(PAR) DD: 27.05.2025-- Smt. Rathamma vs H. Gurudev Since Dead by his LRs***, observed that a suit for partition seeking a share in co-parcenary property generally has no period of limitation under the Limitation Act. This suit is not an exception. Therefore, without much discussion, I hold that the suit is not barred by law of limitation as contended by the defendants No.2 to 7. Hence, I answer Issue No.4 in the “**Negative**”.

73. **ISSUES NO.5 TO 7:** The discussion hereinabove takes me to conclude that the plaintiffs have established that the suit schedule properties are ancestral and joint family properties.

74. The defence plea of prior partition urged by defendants No.2 to 7 stands not proved.

75. It is evident that no partition took place between the plaintiffs and defendants in respect of suit schedule properties.

76. It is an admitted fact that it is only 8 guntas of land out of 1-8-0 acres of land in Sy.No.4/3 of Kodibag Village of Karwar Taluk shown in item No.3 of suit schedule property was subjected to acquisition by the Government and the rest of the suit schedule properties remained with the joint family of plaintiffs and defendants.

77. Taking into consideration all the above, this Court is of the considered view that the suit deserves to be decreed directing the division of shares granting and holding that the plaintiffs are entitled to $\frac{1}{6}^{\text{th}}$ share each in all the suit

schedule properties excepting 8 guntas of land in Sy.No.4/3 of Kodibag Village shown in item No.3 of suit schedule property. Since the compensation already paid by the Government is not made as the subject matter of the suit and no such details are given in the plaint, the share in the said compensation is refused. In view of the relationship of the parties to the suit, there is no order as to costs. In view of all these, I answer Issues No.5 and 6 in the **“Affirmative”** and Issue No.7 in the **“Negative”**.

78. **ISSUE NO.8:** For the forgoing reasons and discussion, I pass the following:

ORDER

- (i) The suit is ***decreed*** as under:
- (ii) The plaintiffs are entitled to $\frac{1}{6}$ th share each in all the suit schedule properties excepting 8 guntas of land in Sy.No.4/3 of Kodibag Village shown in item No.3 of suit schedule property.

- (iii) There shall be a Final Decree Proceedings under Order XX Rule 18 CPC.
- (iv) In view of the relationship of parties, there is no order as to costs.
- (v) Draw preliminary decree accordingly.

(Dictated to the Stenographer directly on computer, typed by her, corrected and then initialed by me and pronounced in the Open Court on this the 11th day of March, 2026)

(Ganesha Padiyar U)
Addl. Senior Civil Judge & JMFC.,
Karwar.

ANNEXURE

1. **List of witnesses examined for the plaintiffs :**
- PW.1 : Smt. Vishranti D/o Datta Tamse @
Smt. Ahilya Murari Padwalkar
2. **List of witnesses examined for the defendants :**
- DW.1 : Miss. Mukta D/o Ganapati Kalgutkar
3. **List of documents exhibited for the plaintiffs :**
- Ex.P.1 to 8 : RTC extracts
Ex.P.9 to 13 : Certified copies of Record of Rights.
Ex.P.14 : Certified copies of Judgment in
LAC Nos.1/1979, 4/1980, 5/1980 &
6/1978

- Ex.P.15 : Certified copy of Award
Ex.P.16 & 17 : RTC extracts
Ex.P18 : Certified copy of IA No.17 filed in O.S
No.212/2011
Ex.P.19 : Certified copy of IA No.18 filed in O.S
No.212/2011
Ex.P.20 to 25 : Certified copies of Mutation Registers
Ex.P.26 : Certified copy of order-sheet in
LAC Ex.Case No.290/2009
Ex.P.27 : Certified copy of IA No.8 filed
in Ex.No.290/2009.

4. **List of documents exhibited for the defendants :**

- Ex.D.1 : Certified copy of Order dated 14.03.1979
Ex.D.2 : Certified copy of Form No.10

(Ganesha Padiyar U)
Addl. Senior Civil Judge & JMFC.,
Karwar.