

From No.9  
{Civil Title  
sheet for  
judgment in  
suits}

KAUK510004252016



Presented on : 12-07-2016

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Decided on : 12-01-2023

Duration : 6 years, 6 months, 0 days

**TITLE SHEET FOR JUDGMENT IN SUITS**

**BEFORE THE CIVIL JUDGE & JMFC., AT HALIYAL**

**PRESENT: - DESHABHUSHAN KOUJALAGI, B.A.LLB.,,  
CIVIL JUDGE & JMFC., AT HALIYAL**

**DATED THIS THE 12th DAY OF JANUARY, 2023**

**O.S. No.80/2016**

- PLAINTIFFS :**
01. Smt. Demavva W/o Janaba Belgaonkar,  
Age: 78 Years,
  02. Smt. Shakuntala W/o Ramakant Madival  
(deceased by her LR's Ramakant  
Madival) Age: 65 years,
  03. Sri. Chandrakant S/o Janaba Belgaounkar  
Age about: 55 years,
  04. Smt. Vatasala W/o Ratan Kumtekar  
(deceased by her LR's
  - 4(a) Yogesh S/o Ratan Kumtekar,  
Age about: 24 years,
  - 4(b) Prabhu S/o Kumtekar,  
Age about: 20 years,  
(All are agriculturist, R/o Ambarda Post  
Pradhani, Tq: Joida, Dist: (U.K)

**(By: Sri. S. S. Kankatri., Advocate)**

V/s

- DEFENDANTS:** 01 Sri. Babu Balu Kokitakar deceased by his LR's,  
 1(a). Anasuya W/o Babu Belgaonkar  
 (kokitkar), Age:55 Years,  
 1(b). Gundu S/o Babu Belgaonkar  
 (kokitkar), Age:35 Years,  
 1(c). Prakash S/o Babu Belgaonkar  
 (kokitkar), Age:33 Years,  
 (Deceased by his Lr's)
- i. Prajwal S/o Prakash Belgaonkar,  
 Age: 13 years minor,
- ii. Pratiksha D/o Prakash  
 Belgaonkar, Age: 12years minor,  
 By Minor Guardian Nagraj  
 Hanumanth Gatti, R/o  
 Bhagwatiwada, Bhagwati,  
 Tq: Haliyal Dist: Uttar Kannada
- 02 Sri. Keerappa S/o Gundu Belgaonkar  
 (kokitkar),  
 Age:65 Years, Occ:  
 (All are Agriculture, R/o Pradharshan  
 Road, Haliyal Tq: Haliyal, Dist: Uttar  
 Kannada)
- (Defendant No.1(a,b) c(ii) and 2B) by  
 By: Sri. P.B.Angadi, Advocate.)**

Date of institution of the suit	12.07.2016		
Nature of the suit	For Partition & Separate Possession		
Date of the commencement of recording of the evidence	23.11.2017		
Date on which judgment was pronounced	12.01.2023		
Total Duration	Years	Months	Days
	06	06	00

## **J U D G M E N T**

Suit of the plaintiffs is for the relief of partition and separate possession against the defendants in respect of suit schedule properties. The plaintiffs have narrated the suit properties in the plaint as under:

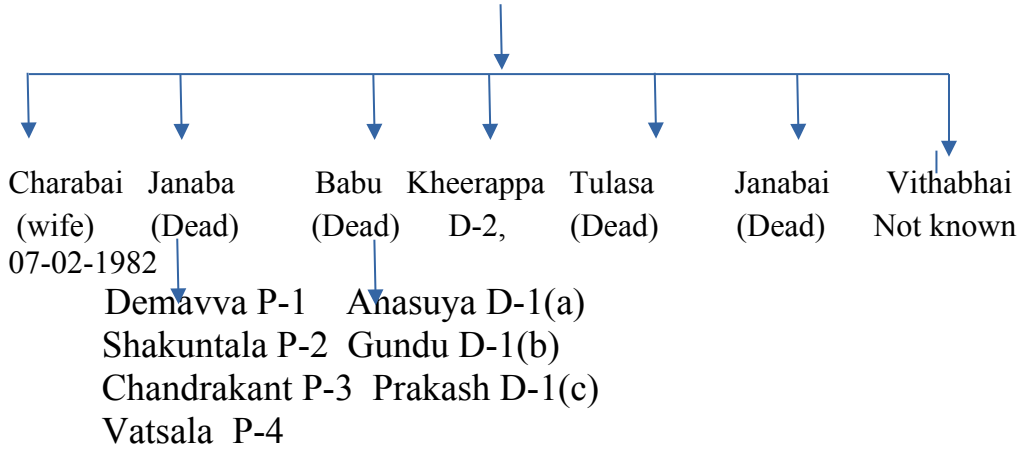
### Descriptions of suit properties:

The suit property involved in this case is as mentioned below:

Schedule-A properties- Agricultural landed properties bearing block No. 71/1A, Area 3-26-00 Assessment Rs. 22-10 and 71/1B Area 3-2-600 of Tegnalli Village in Haliyal Taluka both are bounded by the survey stones.

Schedule-B House properties Municipality No. 901 situated in 19/B Ward, Pradarshan Road situated within the limits Town Municipality, Haliyal and Haliyal City Survey No.

**02.** The Genealogy of the family of the plaintiffs and Defendants is furnished by the plaintiffs as below:

**GENEALOGY:****Gundu Balu Belagaonkar(07-01-1968)**

**03.** Facts in brief on the side of the plaintiffs are that, they constitute the members of Hindu Undivided Family along with defendants and the suit properties are Hindu Joint Family Properties. The original owner of the suit properties by name Sri. Gundu S/o Balu Belagaonkar was died on 07-01-1968 leaving behind his wife Smt. Chandrabai and children by name Sri. Janaba, Sri. Babu, Sri. Kheerappa, Tulasabai, Janabai and Vithabai as his Class-I legal heirs.

**04.** It is further pleaded that, after the death of Sri. Gundu S/o Balu Belagaonkar, all his legal heirs have inherited the suit properties and they have equal right, title and share in the same. The Janaba being the eldest son of Sri. Gundu S/o Balu

Belagaonkar became the manager of the joint family and he was looking after the joint family affairs till his death on 15-11-1974.

**05.** It is further pleaded that, suit schedule 'A' properties are tenanted lands which have been granted in the name of Chandrabai W/o Gundu Belagaonkar under the provisions of Karnataka Land Reforms Act to the benefit of entire joint family and said Chandrabai was died on 07-02-1982. After her death, name of Chandrabai was deleted from the revenue records and the names of Babu, Kheerappa, Tulasabi, Janabai and Vithabai were entered. Thereafter, in the year 1990, the names of Anusuya and Kheerappa were entered. It is further pleaded that, Tulasabi and Janabai were died without leaving behind them any legal heirs and Vithabai was not known for about 10 years and as such, only three branches have been remained in the joint family of Gundu S/o Babu Belagaonkar i.e., the plaintiffs, defendant No.1 and 2.

**06.** It is further pleaded that, suit schedule 'B' properties are house and open site properties and the same are also joint family properties of aforesaid three branches which have been inherited by them through Sri. Gundu Belagaonkar and as such, all three branches have equal right, title and share in both suit

schedule 'A' and 'B' properties. The suit schedule properties are in joint possession and enjoyment of plaintiffs and defendants No.1 and 2 wherein, no partition is effected by metes and bounds and plaintiffs have 1/3rd share in the same. In the month of January, 2016 and on 05-06-2016, the plaintiffs have demanded his share in the suit properties but the same was postponed and refused by the defendant No.1 and 2 and as such, the plaintiffs are constrained to file the present suit.

**07.** After registration of the suit, Court has issued suit summons to the defendants. In pursuance of the same, the defendants have appeared through their counsels and contested the suit by filing written statement.

**08.** The defendants by denying the case of the plaintiffs have pleaded that, late Sri. Gundu S/o Balappa Belagaonkar and his wife late Smt. Chandrabai had only two sons and three daughters by name Babu, Kheerappa, Tulasabi, Janabai and Vithabai. It is further pleaded that, Janaba is not at all the son of late Sri. Gundu Belagaonkar and his wife Smt. Chandrabai. As such, late Janaba is not the legal heir of said Gundu and Chandrabai. When such being the case, question of late Janaba

being a member of joint family or manager of joint family does not arise for consideration.

**09.** It is further pleaded that, two daughters of Gundu and Chandrabai i.e., Janabai and Vithabai are alive till today and as such, they are also the necessary parties to the suit. Similarly, late Smt. Tulasabai has got issues and they are also necessary parties to the suit. In view of the same, suit of the plaintiffs is bad for non-joinder of necessary parties.

**10.** It is further pleaded that, the defendant No.1 Sri. Babu is not at all the son of Balu but he is the son of Gundu and as such, description of the cause title of the plaint is not correct. The plaintiffs being the stranger does not know the details of family of defendants and he has no right, title or interest in the suit properties and the suit of the plaintiffs without seeking the relief of declaration is not maintainable. It is further pleaded that, the defendant No.2 and his elder brother late Sri. Babu S/o Gundu Kokitkar were cultivating the suit lands as tenants and as such, their names have been recorded as holders of the concerned properties and they are in actual cultivation of the same. The said lands are individually tenanted lands of two branches of defendants

wherein, the plaintiffs have no manner of rights. The plaintiffs at the instigation of ill-wishers of the defendants have filed the present suit and he is not at all entitled for any relief.

**11.** It is further pleaded that, suit schedule 'B' property is a small black tiled house with separate portion therein and the same is occupied by two branches of the defendants since its construction and the said properties are self acquired properties of two branches of defendants. It is further pleaded that, said house property is situated within the limits of Town Municipality, Haliyal and said Municipality is also necessary party to the suit. The defendants have applied for regularization of their occupation of the land and suit of the plaintiffs is not maintainable and deserves to be dismissed. With these facts and pleadings, defendants pray to dismiss the suit.

**12.** Based on the rival pleadings, the Learned Pre-Decessor-in-Office has framed the following:

### **ISSUES**

- 1) Whether the plaintiffs prove that, they are the legal heir of Late Gundu and Chandrabai?
- 2) Whether the plaintiffs prove that the suit properties are the joint family properties?

- 3) Whether the plaintiffs prove that they are entitled to 1/3rd share in the suit schedule properties?
- 4) Whether the defendants prove that the suit of the plaintiff is bad for non-joinder of necessary parties?
- 5) Whether the defendants prove that defendant No.1 is the son of Gundu?
- 6) Whether the defendants further prove that suit schedule properties are the self acquired properties as averred in para 12 and 13 of written statement?
- 7) Whether the plaintiffs are entitled for the relief as sought for?
- 8) What order or decree?

**13.** To prove their case, the plaintiff No.3 has got examined himself as PW1 and documents at Ex.P1 to P13 were marked. On the other hand, the defendant No.1(b) has got examined himself as DW.1 and one witness is examined on defendants' side as DW.2 and documents at Ex.D1 to D4 were marked.

14. Heard arguments of **SRI. S. S. KANAKATRI**, Ld. counsel for the plaintiffs. Heard arguments of **SRI. P . B. ANGADI**, Ld. counsel for defendants.

15. Having heard and perusal of the records, the answers to the above issues are as under:

ISSUE NO.1	:	In the Affirmative..
ISSUE NO.2	:	In Partly Affirmative.
ISSUE NO.3	:	In Partly Affirmative.
ISSUE NO.4	:	In the Affirmative.
ISSUE NO.5	:	In the Affirmative.
ISSUE NO.6	:	In the Negative.
ISSUE NO.7	:	In the Negative.
ISSUE NO.8	:	As per final order for the following:

**: REASONS :**

16. **ISSUE NO.1:** According to plaintiffs, late Sri. Gundu Belagaonkar and his wife late Smt. Chandrabai Belagaonkar had three sons and three daughters i.e., Janaba, Babu, Kheerappa, Tulasabai, Janabai and Vithabai. The plaintiffs further contend that, they are the legal heirs of Janaba who was the eldest son of late Sri. Gundu Belagaonkar and his wife late Smt. Chandrabai Belagaonkar. On the other hand, the defendants have contended that, said Janaba was not at all the son of late Sri. Gundu

Belagaonkar and his wife late Smt. Chandrabai Belagaonkar and he is totally a stranger to the family of defendants. In view of defendants' specific denial of relationship between Janaba and Gundu Belgaonkar, initial burden is cast on the plaintiffs to prove that, said Janaba was the son of Gundu Belgaonkar and his wife late Chandrabai Belagaonkar and in turn, they are the legal heirs of said Gundu and Chandrabai Belagaonkar.

17. To substantiate their case, the plaintiff No.3 has got examined himself as PW-1 by filing affidavit in lieu of examination-in-chief and reiterated the contents of plaint averments. Apart from oral evidence, the plaintiffs have relied upon Ex.P1 to 13 documents and out of which, **Ex.P1** is the Death Certificate of Prakash Babu Belagoankar, **Ex.P2** is the Death Certificate of Savitri Prakash Belagaonkar, **Ex.P3** is the RTC Extract of Teganahalli Village Sy.No.71/1A, **Ex.P4** is the RTC Extract of Teganahalli Village Sy.No.71/1B, **Ex.P5** is the Death Certificate of Gundu Balappa Kokitakar, **Ex.P6** is the Death Certificate of Chandrabai Gundu Kokitakar, **Ex.P7** is the Death Certificate of Janaba Gundu Belagaonkar , **Ex.P8** is the certified copy of extract of Varasa Register bearing No.16, **Ex.P.9** is the

Certified copy of M.E. No.633, 826, 870, **Ex.P.10** is the Certified copy Hissa Form No.XII bearing No.953, **Ex.P.11** is the Certified copy of survey sketch of Sy No.71/1A, **Ex.P.12** is the Certified copy of survey sketch of Sy No.71/1B and **Ex.P.13** is the certified copy of extract of Varasa Register bearing No.16.

**18.** On the other hand, to rebut the case of the plaintiffs, the defendant No. 1(b) has got examined himself as DW-1 and the defendants have also got examined another witness as DW 2 on their side and they have relied upon four documents as per Ex.D1 to D4. **Ex.D1** is certified copy of Property Card Extract of CTS No. 3239, **Ex.D2** is certified copy of Property Card Extract of CTS No. 3240, **Ex.D3** is the certified copy of sketch of CTS No.3239 and 3240 and **Ex.D4** is the RTC Extract of Teganahalli Village Sy.No.71/2.

**19.** To prove the relationship of late Sri. Janaba with late Sri. Gundu Belagaonkar and his wife late Smt. Chandrabai, the plaintiffs have relied upon the death certificate of said Janaba as per Ex.P7. In the said death certificate, name of the father of Janaba is shown as Gundu Balu Belagaonkar and name of the mother of Janaba is shown as Chandrabai Gundu Belagaonkar. The

said death certificate is issued by the competent authority much prior to the filing of the suit. This death certificate is one of the basic document to show the relationship of late Sri. Janaba with late Sri. Gundu Belagaonkar and his wife late Smt. Chandrabai.

**20.** Coming to the next document, the plaintiffs have relied upon the certified copy of extract of Varasa Register bearing No.16 as per Ex.P8 and 13 wherein, list of legal heirs of late Sri. Gundu Belagaonkar is given and Janaba is shown as one of the son of Gundu S/o Balu Belagaonkar. As per the said documents, Sri. Gundu Belagaonkar was died on 07-01-1968 by leaving behind him (1) Janaba-son, (2) Babu-son, (3) Kheerappa-son, (4) Tulasa-daughter, (5) Janabai-daughter, (6) Vithabai-daughter and (7) Chandrabai-wife. Hence, Ex.P8 and 13 documents supports the contention of the plaintiffs that, Janaba was one of the son of late Sri. Gundu S/o Balu Belagaonkar and his wife Smt. Chandrabai Belagaonkar.

**21.** During the course of cross examination of PW1, nothing worth has been elicited from the mouth of PW1 on the side of defendants to disbelieve the version of the plaintiffs that, Janaba was the son of Sri. Gundu Belagaonkar. On the other hand, the

learned counsel for the plaintiff has suggested DW1 in his cross examination that, Janaba was the eldest son of Gundu Belagaonkar and the said suggestion is not denied by DW1 but, he has shown his ignorance to the same. Similarly, DW2 who is an independent witness has also shown his ignorance to the suggestion with regard to relationship of late Sri. Janaba with late Sri. Gundu. The defendants have not posed any questions regarding the standing of name of Janaba in Ex.P8 and 13 as one of the son of Gundu Belagaonkar. The documents relied upon by the plaintiffs are public documents which have been maintained by the concerned authorities in discharge of their official duties and they have got evidentiary value. To disbelieve the said documents, no better documents have been produced by the defendants.

**22.** Therefore, the oral and documentary evidence on the side of the plaintiffs clearly establishes the fact that, late Sri. Janaba is one of the son of late Sri. Gundu Belgaonkar and late Smt. Chandrabai Belagaonkar. There is no dispute that, the plaintiffs are the legal heirs of late Sri. Janaba S/o Gundu Belagaonkar. The defendants have denied that, late Sri. Janaba was the son of Gundu Belgaonkar and they have not denied the

relationship between late Janaba and plaintiffs. Hence, when the plaintiffs have already proved that, late Sri. Janaba was the son of late Sri. Gndu Belagaonkar obviously, the plaintiffs becomes the legal heirs of late Gundu Belagaonkar. The plaintiff No.1 is the wife and plaintiffs No.2 to 4 are the children of late Sri. Janaba Belagaonkar. Since the plaintiffs have proved the relationship between late Sri. Gundu Belgaonkar and late Sri. Janaba as father and son, plaintiff No.1 becomes the daughter-in-law and plaintiffs No.2 to 4 becomes the grandchildren of late Sri. Gundu Belagaonkar and his wife late Smt. Chandrabai Belagaonkar. Hence, the plaintiffs have proved that, they are the legal heirs late Sri. Gundu Belagaonkar and his wife late Smt. Chandrabai Belagaonkar. Accordingly, Issue No.1 is answered in the **AFFIRMATIVE**.

**23. ISSUES NO.2, 3 & 6:** Since these Issues are interlinked with each other, they are taken together for common discussion to avoid repetition of facts and appreciation of evidence.

**24.** According to plaintiffs, the suit properties are joint family properties of themselves and the defendants and they have 1/3rd share in the same. On the other hand, the defendants have

contended that, suit schedule 'A' properties i.e., agricultural lands are granted to them in their individual capacity and suit schedule 'B' properties are still in the name of Town Municipality, Haliyal and their applications for regularization of their occupation are pending and as such, the plaintiffs are not entitled for any share in the suit properties.

**25.** So far as suit schedule 'A' properties i.e., agricultural lands are concerned, as per Ex.P3/RTC, Sy. No.71/1A of Teganahalli Village is measuring 03 acres 26 guntas and the same is standing in the name of defendants No.1(a) to (c). Similarly, Ex.P4/RTC is pertaining to Sy. No.71/1B of Teganahalli Village measuring 03 acres 26 guntas and the same is standing in the name of defendant No.2. There is no dispute that, as of now, the revenue records of the suit lands are standing in the name of defendants and plaintiffs' name could not be found. However, it is necessary to find out the source of title to the said suit lands.

**26.** The plaintiffs have relied upon mutation entries bearing No.633, 826, and 870 as per Ex.P9. The mutation entry bearing No.633 discloses that, originally the agricultural land bearing original Sy. No.71/1 of Teganahalli Village was standing

in the name of late Sri. Gundu S/o Balu Belagaonkar and after his death on 07-01-1968, name of his wife i.e., Smt. Chandrabai was ordered to be mutated as manager of the family.

**27.** Another mutation entry bearing No.826 discloses that, on 25-04-1981, the Land Tribunal, Haliyal was conferred tenancy rights in the name of late Smt. Chandrabai Belagaonkar as per order passed in LRM/SR-804 dated 15-01-1981. Hence, ME No.633 and 826 clearly show that, originally late Sri. Gundu Belagaonkar was the tenant of suit lands and after his death, tenancy rights has been conferred on his wife i.e., late Smt. Chandrabai Belagaonkar. As per the said mutation entries, suit schedule 'A' properties are not granted to defendants in their individual capacity but, the same are originally granted in the name of Smt. Chandrabai Belagaonkar.

**28.** It is to be noted that, as per mutation entry bearing No.870 i.e., Ex.P9, the names of defendants No.1, 2, Tulasabai, Janabai and Vithabai were ordered to be mutated in the revenue records of original Sy. No.71/1. But the said order of mutation is not based on conferring tenancy rights to them. In fact, names of defendants No.1, 2, Tulasabai, Janabai and Vithabai were ordered

to be mutated in the revenue records of original Sy. No.71/1 on the basis that, they are the legal heirs of deceased Smt. Chandrabai Belagaonkar. Hence, at no stretch of imagination, it could be held that, suit schedule 'A' properties are granted lands of defendants in their individual capacity.

**29.** Though the DW1 in his cross examination has deposed that, suit lands granted to his father and his uncle under the provisions of Karnataka Land reforms Act but, no documents have been produced by the defendants to prove the same. In fact, the DW1 has admitted that, suit land was cultivating by his grandfather Sri. Gundu Belagaonkar even prior to 1965. The DW1 has further admitted that, after the death of his grandfather, the revenue records of Sy. No.71/1 of Teganahalli Village was mutated in the name of his grandmother Smt. Chandrabai as manager of the family. Hence, the suit schedule 'A' properties are not separate properties of defendants but the same are originally granted land to Smt. Chandrabai Belagaonkar.

**30.** As per Ex.P10 i.e., ME No.953, it appears that, Smt. Anasuya W/o Babu Belagaonkar and Sri. Kheerappa S/o Gundu Belagaonkar have got devided original Sy. No.71/1 of Teganahalli

Village. But it is already discussed above that, suit schedule 'A' properties are not granted to the defendants in their individual capacity. When such being the case, the defendants alone cannot divide the suit lands. Moreover, the said division is not based on any documents recognized by law. On the other hand, the oral and documentary evidence relied upon by the plaintiffs support their case that, suit schedule 'A' properties are tenanted lands of plaintiffs and defendants. When Chandrabai Belagaonkar was died intestate, all her legal heirs are entitled for their respective shares in the suit schedule 'A' properties.

**31.** So far as suit schedule 'B' properties are concerned, no single documents have been produced by the plaintiffs to show that, said house and open site properties are joint family properties of themselves and the defendants. When plaintiffs have failed to prove that, the suit schedule 'B' properties are joint family properties, question of partition in the same would not arise.

**32.** Now coming to the next point, the plaintiffs have sought 1/3rd share in the suit schedule properties. It is already discussed above that, late Sri. Gundu Belagaonkar and his wife late Smt. Chandrabai have died leaving behind them 03 sons and 03

daughters. When such being the case, all six children would get 1/6th share each in the suit schedule 'A' properties. The plaintiffs represent the branch of late Sri. Janaba S/o Gundu Belagaonkar and as such, they are entitled for 1/6th share together in the suit schedule 'A' properties and they are not entitled for 1/3rd share as sought in the plaint. So far as suit schedule 'B' properties are concerned, the plaintiffs are not entitled for partition as they have failed to prove that said properties are joint family properties. With this discussion, Issue No.2 & 3 are answered in **PARTLY AFFIRMATIVE** and Issue No.6 is answered in the **NEGATIVE**.

**33. ISSUE NO.5:** The defendants have contended that, deceased defendant No.1 i.e., Sri. Babu is the son of Gundu Belagaonkar and not the son of Balu Belagaonkar. In this regard, it is necessary to see the genealogy furnished by the plaintiffs in the plaint. The plaintiffs in the genealogy have shown that, deceased defendant No.1 i.e., Sri. Babu is the son of late Sri. Gundu Belagaonkar. However, in the cause title of the plaint, the plaintiffs have shown him as the son of Balu Belagaonkar. Prima facie, showing Babu Belagaonkar as the son of Balu Belagaonkar in the cause title of the plaintiff is a typographical error and not more

than that. Hence, no further discussion is required on this Issue. In fact, framing of present Issue was not at all required. The plaintiffs have admitted that, deceased defendant No.1 i.e., Sri. Babu is the son of Gundu Belagaonkar in the genealogy furnished by them in the plaint. In view of said admission, Issue No.5 is answered in the **AFFIRMATIVE**.

**34. ISSUES No.4 & 7:** Since these Issues are interlinked with each other, they are taken together for common discussion to avoid repetition of facts and appreciation of evidence.

**35.** The plaintiffs in their plaint have pleaded that, late Sri. Gundu S/o Balu Belagaonkar has died leaving behind him his children by name Janaba, Babu, Kheerappa, Tulasabi, Janabai and Vithabai. The plaintiffs have further pleaded at paragraph No.4 of the plaint that, Tulasabai and Janabai have died without having any issues and Vithabai was not known for about 10 years. By pleading the same, the plaintiffs have not made either Tulasabi, Janabai and Vithabai or their legal heirs as parties to the suit.

**36.** On the other hand, the defendants in their written statement at paragraph No.9 have specifically pleaded that, Janabai and Vithabai are still alive. They have also pleaded that, Tulasabi is

no more but, her legal heirs are still alive and as such, Janabai, Vithabai and legal heirs of Tulasabai are necessary parties to the present suit. In view of said specific pleadings, the Court has framed Issue No.4 with regard to non-joinder of necessary parties.

37. Though the plaintiffs have pleaded that, Tulasabai and Janabai have died without having any issues and Vithabai was not known for about 10 years but, the PW1 in his cross examination has deposed as under:

“ವಿಠಾಬಾಯಿ ಇವರು 08-10 ವರ್ಷಗಳ ಹಿಂದೆ ಬೆಳಗಾವಿಯಲ್ಲಿ ವಾಸವಾಗಿದ್ದರು. ಈಗ ಎಲ್ಲಿದ್ದಾರೆ ನನಗೆ ಗೊತ್ತಿಲ್ಲ. ವಿಠಾಬಾಯಿಯವರಿಗೆ ಮೂರು ಜನ ಹೆಣ್ಣು ಮಕ್ಕಳು ಮತ್ತು ಒಂದು ಗಂಡು ಮಗ ಇದ್ದಾರೆ ಎಂದರೆ ಸರಿ. ಬೆಳಗಾವಿ ವಿಠಾಬಾಯಿ ಇವರ ಗಂಡನ ಮನೆ ಎಂದರೆ ಸರಿ. ಜನಾಬಾಯಿ ಇವರ ಗಂಡನ ಮನೆ ತೇಗನಳ್ಳಿ ಇದ್ದು ಅವರು ಬೊಮ್ಮನಳ್ಳಿಯಲ್ಲಿರುತ್ತಾರೆ. ಜನಾಬಾಯಿ ಇವರು ತೀರಿಕೊಂಡಿದ್ದು ಅವರಿಗೆ ಇಬ್ಬರು ಹೆಣ್ಣು ಮಕ್ಕಳು ಇದ್ದಾರೆ. ಅವರ ಗಂಡ ತೀರಿಕೊಂಡಿರುತ್ತಾರೆ. ತುಳಸಾಬಾಯಿ ಇವರ ಗಂಡನ ಮನೆ ಯಲ್ಲಾಪುರ. ಅವರಿಗೂ ಸಹ ಇಬ್ಬರು ಹೆಣ್ಣು ಮಕ್ಕಳು ಇದ್ದಾರೆ.”

As per above deposition, all three daughters of late Sri. Gundu Belagaonkar i.e., Vithabai, Tulasabi and Janabai have legal heirs. Even if for time being it is considered that, all three daughters of late Sri. Gundu Belagaonkar are died but PW1 himself has admitted in his cross examination that, their legal heirs are still alive. When such being the case, it is the duty of the plaintiffs to make them as parties to the suit. However, inspite of

framing specific issue with regard to non-joinder of necessary parties and inspite of specific admission of PW1 in his cross examination with regard to legal heirs of Vithabai, Tulasabai and Janabai, the plaintiffs have not made any attempts to make either Vithabai, Tulasabai and Janabai or their legal heirs as parties to the suit. Since Vithabai, Tulasabai and Janabai or their legal heirs are necessary parties to the suit, without them, Court cannot declare the rights of the plaintiffs in their absence and no effective decree could be passed. Hence, the suit of the plaintiffs is bad for non-joinder of necessary parties.

38. In a recent judgment of Hon'ble Apex Court in *Moreshar Yadaorao Mahajan V/s. Vyankatesh Sitaram Bhedi (d) thr. Lrs. and Others* in *Civil Appeal Nos. 5755-5756 of 2011* dated 27-09-2022, it is held at paragraph No.18 by referring a previous decision rendered in *Mumbai International Airport Private Limited* as under:

***“18. It could thus be seen that a “necessary party” is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the court. It has been held that if a “necessary party” is not impleaded, the suit itself is liable to be dismissed.”***

In the present case, inspite of having knowledge that, the Court has framed specific issue with regard to non-joinder of necessary parties and inspite of admission of PW1 in his cross examination with regard to legal heirs of Janabai, Vithabai and Tulasabai, the plaintiffs have purposely not made any attempts to array them as parties to the suit. When the suit of the plaintiffs is bad for non-joinder of necessary parties, they are not entitled for any relief in the suit and suit is deserves to be dismissed. With this discussion, Issue No.4 is answered in the **AFFIRMATIVE** and Issue No.7 is answered in the **NEGATIVE**.

**39. ISSUE NO.8:** In view of findings on the above Issues and the reasons assigned thereon, Court proceeds to pass the following:

**ORDER**

Suit of the plaintiffs is hereby dismissed with cost.

Draw decree accordingly.

(Computerized to my dictation by the stenographer, printout then revised, corrected, signed and then pronounced in the Open Court on this the 12<sup>th</sup> Day of January, 2023)

**(DESHABHUSHAN KOUJALAGI)**  
Civil Judge & J.M.F.C.,Haliyal.

**ANNEXURE****I. LIST OF THE WITNESSES EXAMINED ON BEHALF OF THE PLAINTIFFS:**

PW-1 : Sri. Chandrakant s/o Janaba  
Belagaonkar.

**II. LIST OF THE DOCUMENTS MARKED ON BEHALF OF THE PLAINTIFFS:**

Ex.P-1 : Death Certificate of Prakash Babu  
Belagoanvakar  
Ex.P-2 : Death Certificate of Savitri Prakash  
Belagaonkar  
Ex.P-3 : RTC Extract of Teganahalli Village  
Sy.No.71/1A  
Ex.P-4 : RTC Extract of Teganahalli Village  
Sy.No.71/1B  
Ex.P-5 : Death Certificate of Gundu Balappa  
Kokitakar  
Ex.P-6 : Death Certificate of Chandrabai Gundu  
Kokitakar  
Ex.P-7 : Death Certificate of Janaba Gundu  
Belagaonkar  
Ex.P-8 : Certified copy of extract of Varasa  
Register bearing No.16  
Ex.P-9 : Certified copy of M.E.No.633, 826, 870.  
Ex.P-10 : Certified copy Hissa Form No.XII bearing  
No.953  
Ex.P-11 : Certified copy of survey sketch of Sy  
No.71/1A  
Ex.P-12 : Certified copy of survey sketch of Sy  
No.71/1B  
Ex.P-13 : Certified copy of extract of Varasa  
Register bearing No.16

**III. LIST OF WITNESSES EXAMINED ON BEHALF OF THE DEFENDANTS:**

DW-1 : Sri. Gundu Babu Kokitakar  
DW-2 : Sri. Shankar Hanumath Mirashi

**IV. LIST OF DOCUMENTS MARKED ON BEHALF OF THE DEFENDANTS:**

- Ex.D-1 : Certified copy of Property Card Extract of CTS No. 3239
- Ex.D-2 : Certified copy of Property Card Extract of CTS No. 3240
- Ex.D-3 : Certified copy of sketch of CTS No.3239
- Ex.D-4 : RTC Extract of Teganahalli Village Sy.No.71/2.

**(DESHABHUSHAN KOUJALAGI)**  
Civil Judge and J.M.F.C., Haliyal