

KAUK510007422022



Presented on : 17-03-2022  
Registered on : 17-03-2022  
Decided on : 23-04-2026

**IN THE COURT OF CIVIL JUDGE & JMFC, HALIYAL**  
**AT: HALIYAL, UTTARA KANNADA**

**Dated this 23<sup>rd</sup> day of APRIL, 2026**

**PRESENT**

**Smt. Geeta.** B.A.LL.B (Hon's) LL.M.,  
Civil Judge and JMFC, Haliyal

**ORIGINAL SUIT NO: 39/2022**

**BETWEEN:**

1. Sri. Abdul Ajij Modinsab Dalal  
Age: 84 years, Occ: Coolie  
R/o. Khaji Galli, Haliyal,  
Tq: Haliyal, U.K

**.....Plaintiff**

***(By Sri. Y.N.A, Advocate for plaintiff)***

**V/s**

**AND:**

1. Sri. Abdul Shikur Modinsab Dalal,  
Age: 68 years, Occ: Coolie  
R/o. Khaji Galli, Haliyal,  
Tq: Haliyal, U.K

**.....Defendant**

***( Deft By Sri. D.K.J., Advocate)***

Date of Institution : **17.03.2022**  
Nature of the suit : For Partition and Separate Possession  
Date of Evidence : 20.06.2023  
Date of Judgment : 23-04-2026  
Total Duration : Year/s Month/s Day/s  
04 01 06

### **JUDGMENT**

This is a suit filed by the plaintiff against the defendant for the relief of partition and separate possession of suit property and to allot his ½ share in the suit property.

**2. The description of the suit property is as under:**

a) CTS No.2773 measuring 20.60 Sq mtrs i.e 222 Sq mtrs situated at Ward B, Church Road, Haliyal bounded by

East : House and shop of Kalal  
West ; House and shop of Hanumant Waddar  
North: Road  
South : House of Nagaraj.

Hereinafter referred as suit property.

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

It is averred by the plaintiff that, he and defendant are own brothers and owners of suit property. The father of plaintiff and

defendant died long back and the suit property is of the ownership of plaintiff and defendant and their names were jointly entered in Town Panchayat records on 29.05.1986 by virtue of the statement given to Town Panchayat. There is no partition between plaintiff and defendant with respect to suit property by metes and bounds, as such plaintiff and defendant have equal right over the suit property. The plaintiff and defendant have orally divided the suit property in the presence of panchas and they were in possession of their respective shares.

4. It is further averred that, the suit property is a house constructed out of bricks, due to heavy rain said house was collapsed. Thereafter, defendant has put up a shed with the consent of plaintiff and running a scrap business. The defendant is obstructing the peaceful possession and enjoyment of his half portion by the plaintiff by throwing waste materials. As such, on 03.02.2022 plaintiff sought for partition of suit property in the presence of panchas but, the defendant specifically denied the share of plaintiff in the suit property. Hence, plaintiff constrained to file this suit.

5. After issuance of suit summons, the defendant appeared through his counsel and filed written statement. In the written statement defendant denied the description of the suit property and stated that CTS NO.2773 is totally measuring 20.60 Sq mtrs, north south 5.15 x 4 mtrs and East-West 04 mtrs bounded by East CTS No.2778 and 2779, West Road, North property of Municipality and South open space of Municipality

and the same is in actual possession of the defendant. The suit property originally belongs to Town Municipality, Haliyal and the defendant was using said open space by putting Imla i.e. temporary shed. On 20.02.1984 the Chief Officer, Town Municipality sold said open space to defendant by executing a registered sale deed. Since then, the defendant is in actual possession and enjoyment of CTS NO.2773 as absolute owner and running a scrap material business. Further, defendant denied plaintiff averments specifically and stated that plaintiff is not in actual possession and suit property is not joint family property of plaintiff and defendant. The defendant exclusively purchased suit property on 20.02.1984 in his individual name through a registered sale deed and he has not executed any registered relinquishment deed with respect to  $\frac{1}{2}$  share in CTS NO.2773 in favour of plaintiff. Therefore, the plaintiff is required to value suit property as per market value and pay court fee. The provisions under Section 35(2) of KCF and SV Act 1958 are not applicable to present case.

**6.** It is further averred that, the defendant has specifically denied the right, title and possession of plaintiff over the suit property. Therefore, plaintiff has to plead and prove his title by seeking the relief of declaration and possession, unless such relief is sought, the suit is not maintainable. The plaintiff is not entitled for partition by metes and bounds. Further it is not the case of plaintiff that, suit property is joint family property of him and defendant. The defendant purchased suit property on

20.02.1984 through a registered sale deed. The plaintiff being elder brother of defendant has managed to get enter his name jointly with defendant in CTS NO.2773 without the knowledge of plaintiff by giving false Waradi and forging his signature. The plaintiff will not acquire any right, title or interest over the suit property by entering his name on the basis of Waradi. Therefore, unless plaintiff produces some transfer deeds he cannot acquire any title over suit property. Further, it is not the case of plaintiff that, he and defendant jointly purchased suit property and he has contributed towards sale consideration amount. Therefore, the suit of the plaintiff is not maintainable.

7. It is further averred that, father of plaintiff and defendant by name Modinsab Dalal was native of Mangalwad Village, he came to Haliyal along with his wife and settled. Modinsab died leaving behind 04 sons by name Abdulgani, Abdulaziz, Akbarsab and Abdulshekur and 02 daughters by name Safiya and Naseema. Other legal heirs of Modinsab are not claiming any interest in suit property. Further, plaintiff filed this suit for the relief partition and separate possession, the CTS NO.1630 to 1637 of Haliyal, were purchased in the name of wife of plaintiff and said properties were not included in this suit. The plaintiff has not disclosed the entire genealogy of Modinsab Dalal and properties owned by him, when he exactly died and when Succession was opened. Further, all interested persons i.e., legal heirs of Modinsab are not made as parties to the suit. Therefore, suit suffers from non-inclusion of family properties

and also non-joinder of necessary parties. With these contentions defendant prayed to dismiss the suit.

8. In view of the above said pleadings, following issues have been framed:

### **ISSUES**

1. Whether plaintiff proves that, himself and defendant are joint owners of suit property as alleged in the plaint?
2. Whether defendant proves that, plaintiff has under valued the suit and the Court Fees paid is deficient?
3. Whether defendant proves that suit of the plaintiff is not maintainable without seeking the relief of declaration of title?
4. Whether defendant proves that, suit of the plaintiff is bad for non-joinder of necessary parties?
5. Whether defendant proves that, suit of the plaintiff is bad for non-inclusion all family properties?
6. Whether plaintiff proves that, he is entitled for the relief of partition and

separate possession of  $\frac{1}{2}$  share in the suit property?

7. What order or decree?

9. In order to prove his case, the plaintiff was examined as PW.1 and got marked 30 documents as Ex.P1 to P30. One another witness was examined as PW.2 but he was not tendered for cross examination. On the other hand, the defendant was examined himself as DW.1 and got marked Ex.D.1 to D.22. One independent witness was examined as CW.1 and got marked 04 documents as Ex.C.1 to 4.

10. Heard arguments.

11. After analyzing the pleadings of the parties, oral and documentary evidence placed on record and after hearing arguments, answers to the above Issues are as under:-

**Issue No.1 : In the Negative**

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

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

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

**Issue No.5 : In the Negative**

**Issue No.6 : In the Negative**

**Issue No.7 : As per final order**

**for the following:-**

## **REASONS**

**12. ISSUE NO.1 :-** It is the case of the plaintiff that, he and defendant being own brothers, are joint owners of suit property and their names jointly entered in Town Panchayat records 29.05.1986 as per the Wardi given by defendant. Since then plaintiff and defendant are in possession of their separate share by dividing it in the presence of panchas. The defendant is running Scrap business in the suit property and he has constructed a shed. The defendant denied the contention of plaintiff and stated that, suit property is exclusively purchased by him on 20.02.1984 in his individual name through a registered sale deed from Town Panchayat, Haliyal. Since then, he is in actual possession and enjoyment of suit property as absolute owner and running scrap business. The plaintiff is not at all in possession of suit property.

**13.** In order to prove his contentions, the plaintiff was examined as PW.1, filed affidavit in lieu of examination in chief and got marked in all 30 documents as Ex.P1 to P30. Ex.P1 is the General Power of Attorney executed by plaintiff in favour of his son to represent him in this case and adduce evidence on his behalf. Ex.P.2 is the CTS extract of property bearing CTS No.2773, wherein the name of defendant entered as Holder No.1 on 24.02.1984, by virtue of sale deed executed by Chief Officer, Town Municipality, Haliyal and the name of plaintiff is entered as Holder No.2 on 29.05.1986 by virtue of Waradi given by defendant to enter the name of plaintiff and his name as joint

owners. Ex.P.3 is the Tax Assessment Extract for the year 2021-22 wherein, the name of plaintiff and defendant shown as joint owners of CTS No.2773, B/642 and B/643. Ex.P.4 is the Javab Baismi, as per this document defendant and plaintiff have entered into a Javab Baismi and the defendant requested the Town Municipality to enter his brother's name i.e., plaintiff's name, in the suit property records along with his name. Ex.P.5 is the notice issued by City Surveyor, Haliyal to defendant to file objection if any to enter the name of plaintiff jointly along with his name at CTS extract of property bearing CTS No.2773. Ex.P.6 is the a letter given by defendant to City Survey Office stating that, he and his brother have purchased suit property jointly hence, he requested the City Surveyor to enter his name and the name of his brother plaintiff jointly in the suit property records. Ex.P.7 is the Tax paid receipt dated 02.03.2022. Ex.P.8 is the letter dated 27.07.2012 issued by Chief Officer to plaintiff to file objection if any to enter his name in the records of suit property. Ex.P.9 to 11 are photos and CD of suit property. Ex.P.12 is the letter issued by HESCOM, Haliyal supplying electricity connection to suit property. Ex.P.13 is the no objection letter issued by Chief Office, Haliyal to run Air Filling Business in House No.B373 i.e., suit property. Ex.P.14 to 19 are Tax paid receipts. Ex.P.20 to 29 are the Rent Agreements entered between plaintiff and one Irshadkhan Lohani with respect to property No.B/373. Ex.P.30 is the certificate issued Chief Officer, Town Municipality, Haliyal stating that property Khatha No.B/642 and B/643 out of CTS

No.2773 was entered in the name of plaintiff in the year 1985-86 as property Khatha No.B/373.

**14.** In order to prove his contentions, the defendant was examined as DW.1, filed affidavit in lieu of examination in chief and got marked in all 22 documents as Ex.D1 to D22. Out of which, Ex.D.1 photo, Ex.D.2 is the Tax Assessment extract for the year 2022-23 with respect to CTS No.1993 and 1994, which were Marked through confrontation to PW.1. Ex.D.2 Tax Assessment Extract for the year 2022-23 with respect to CTS No.1993 and 1994 which stands in the name of one Abdulgani Mohadinasab Dalal, Ex.D.3 and 4 are the photos, Ex.D5 is the Tax Assessment extract for the year 2022-23 with respect to CTS No.1630 to 1636, which were Marked through confrontation to PW.1. Ex.D.5 Tax Assessment Extract for the year 2022-23 with respect to CTS No.1630 to 1636, which stands in the name of one Abidabi W/o Abdulaziz Dalal, Ex.P.6 is the photo, Ex.D.7 is the Tax Assessment extract for the year 2023-24 with respect to CTS No.1621, which were Marked through confrontation to PW.1. Ex.D7 Tax Assessment Extract for the year 2023-24 with respect to CTS No.1621, which stands in the name of one Halimabi S/o Mahamad Akbar Dalal. Ex.D.8 is the sale deed dated 20.02.1984 executed by Chief Officer, Town Municipality, Haliyal in favour of defendant and sold suit property to defendant for consideration of Rs.250/-. Ex.D.9 is the Ruled card of CTS No.2773 wherein, the name of defendant shown as Holder of suit property. Thereafter, the name of plaintiff was entered by

virtue of Waradi. Ex.D.10 is the CTS map of property No.2778, Ex.D.11 to 17 are the tax paid receipts, Ex.D.18 is the electricity bill for the month of July 2010 to February 2024. Ex.D.19 is the Tax Demand Register Extract wherein, the name of plaintiff and defendant shown as owners of suit property and the suit property was divided and numbered as B/643 and B/642. Ex.D.20 is the no objection letter issued by Chief Officer, Town Municipality, Haliyal stating that he has no objection to obtain electricity connection by defendant, Ex.D.21 is the Registration Certificate wherein, the name of Mahammed Imran Abdul Shikur Dalal shown as legal heir of defendant and he permitted to put up business at property bearing B/643. Ex.D.22 is the letter given by defendant to Chief Officer, Town Municipality, Haliyal requesting to furnish documents regarding properties bearing No.38 and 39.

**15.** The authorized person of Chief Officer, Town Municipality was examined as CW.1 and got marked Ex.C1 to 4. Ex.C1 is the Authorization Letter, Ex.C2 is the Attested copy of Tax Demand Extract of Property Khata no. B-642 and B-643, wherein the name of plaintiff and defendant shown as owners of said properties, Ex.C3 and 4 are the CTS Extract of property No. 2773 and its Map.

**16.** On perusal of documentary evidence, Ex.D.8 proves that the Chief Officer, Town Municipality executed sale deed with respect to suit property in the name of defendant exclusively and sold the suit property for consideration of

Rs.250/- and on the same day possession was handed over to defendant. Thereafter, his name was entered in CTS extract. These facts are clearly admitted by PW.1 in his cross examination. On perusal of Ex.P.4, it appears that on 29.05.1986 defendant and plaintiff have given a Javab Besmi to enter their names in CTS records jointly. Based on which, the Town Municipality has issued notice to defendant to submit any objections to enter the name of plaintiff in the CTS records and he executed no objection letter as per Ex.P.6 to enter the name of plaintiff in CTS records along with his name and on the same day, the name of plaintiff was entered in CTS extract as Holder No.2 of CTS No.2773. Now the name of plaintiff and defendant are jointly entered in the suit property Extract.

17. However, the defendant specifically denied the execution of Jawab Besmi in the name of plaintiff contending that plaintiff has forged his signature and got entered his name in CTS records in collusion with Municipal Authorities. Further, the DW.1 in his cross examination denied his signature at Ex.P.4 and 6 and also denied the suggestion that, he and plaintiff both had given Waradi to CTS Authorities and got entered their names jointly in CTS records. Further, the DW.1 in his cross examination admitted that suit property is not their family property and it was purchased in the name of his father. He denied the suggestion that he and plaintiff have collected money in the year 1984 and purchased suit property in his name, as such, suit property belongs to him and plaintiff and they divided it

through oral partition and running business. In spite of such specific denial by the defendant, plaintiff has not made any efforts to prove that signature at Ex.P.4 and 6 is of defendant. Therefore, plaintiff failed to the execution of Ex.P.4 and 6 by the defendant, agreeing to enter the name of plaintiff in CTS records of suit property.

**18.** Further, it is the contentions of plaintiff that, defendant agreed to enter his name along with him in CTS records of suit property as such, he become joint owner of suit property. However, no documents produced by the plaintiff to prove that defendant relinquished his right in half portion of the suit property in favour of him through a registered relinquishment deed. It is settled law that, as per Section 17 of Indian Registration Act, when a person relinquishes his right in any immovable property, execution of registered instrument i.e., registered relinquishment deed is mandatory. In the case on hand, defendant has not executed any registered relinquishment deed in favour of plaintiff, relinquishing his right in half portion of suit property. Therefore, though the name of plaintiff entered in CTS extract and tax demand register extract of suit property but, said documents will not confer any right or title in favour of plaintiff. In the reported judgment, i.e., **Smt Avvamma M Talwar V/s State of Karnataka and Others AIR 2006(NOC) 1598 (KAR)**, it is held that transfer of immovable property, mutation entry, recorded by revenue authorities cannot substitute for a registered deed of transfer of immovable

property. Merely on the basis of an alleged Wardi no legal transfer of right, title and interest in immovable property can be effected.

**19.** In **Jyotish Deka others V.s Gajendra Deka and others AIR 2015 Ghohati 142, Union of India Other V/s Vasvi Co-Op Housing Society Ltd and Others AIR 2014 SC 937, Basalingppa Chanappa Mamale Pattan Shetter and Others V/s Dundappa Puttappa Panchappanavar, 1998(4) Kar.L.J. 368, H Laxamaiah Reddy and others V/s L Venkat Reddy, Smt. Ismailbee V/s Mehatab Saheb ILR 2021 KAR 2603**, the Hon'ble Courts have categorically held that, mutation entries do not convey or extinguish any title, and those entries are relevant only for purpose of collection of land revenue. Further, revenue documents are not documents of title. Therefore, though the name of plaintiff entered in CTS records and tax demand register extract of suit property but, said documents does not confer title in favour of plaintiff.

**20.** Further, the PW.1 in his cross examination admitted that, originally the suit property belongs to TMC Haliyal and Chief Officer has executed sale deed only in favour of defendant on 20.02.1984. The DW.1 deposed that, plaintiff and defendant both have purchased suit property in the year 1984 and in the year 1986 the name of plaintiff was entered in CTS extracts as such plaintiff is having ½ share in the suit property. He further deposed that plaintiff and defendant both have jointly paid consideration amount and purchased suit property in the name

of defendant. Further, DW.1 admitted that, said fact has not been pleaded in the plaint and deposed that, though both have purchased suit property but sale deed was registered only in the name of defendant. He further admitted that his father has not signed the registered sale deed either as a witness or as purchaser. He admitted the suggestion that, if both plaintiff and defendant have purchased suit property the sale deed could have executed both in the name of plaintiff and defendant. Therefore, plaintiff failed to prove purchase of suit property by him and defendant jointly. If both plaintiff and defendant have purchased suit property why the plaintiff has not pleaded such facts in the plaint?. **In Abubakar Abdul Inamdar and others V/s Harun Abdul Inamdar and others AIR 1998 SC 112, Bachchaj Nahar V/s Nilima Mandal and another, Civil Appeal No.5798-5799 of 2008 dated 23.09.2008**, the Hon'ble Supreme Court held that no amount of proof can substitute pleadings which are the foundation of claim of a litigating party. It is further held that no amount of evidence can be looked into, upon a plea which was never put forward in the pleadings. A question which did not arise from the pleadings and which was not the subject matter of an issue, cannot be decided by the court. It is further held that a court cannot make out a case not pleaded. The Court should confined its decision to the question raised in pleadings nor can it grant a relief which is not claimed and which does not flow from the facts and the cause of action alleged in the plaint. It is settled that, in the absence of pleading, evidence, if any, produced by the parties cannot be considered. It is also equally

settled that no party should not be permitted to travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case set up by it. In the case on hand, the plaintiff has not pleaded anything regarding purchase of suit property by him and defendant jointly and payment of consideration jointly. Now the plaintiff is taking contention that consideration amount was paid by them jointly however, the sale deed was executed only in the name of defendant. It shows that plaintiff is traveling beyond his pleading which cannot be considered.

**21.** Further, though the plaintiff is contending that based on Wardi given by defendant his name entered in the CTS extract and also Tax Demand Register Extract. However, the CW.1 in his cross examination specifically admitted that, Tax Demand Extract was manipulated and deleted the name of defendant and entered the name of plaintiff for property No.B642 and entered the name of defendant to property No.B.643. Further, he admitted that no supportive documents to enter the name of plaintiff in Tax Demand Register Extract. He also admitted that before entering the name of plaintiff, no notice was issued to defendant. Therefore, it is proved that though there is no right over suit property plaintiff got entered his name in CTS extract and demand register extract as owner of  $\frac{1}{2}$  portion of CTS No.2773. However, said documents do not confer title in favour of plaintiff. Under these circumstance, plaintiff failed to

prove that he and defendant are joint owners of suit property.  
**Hence, I answer Issue No.1 in the Negative.**

**22. ISSUE NO.2:** It is the contention of defendant that, he has not executed any relinquishment deed in respect of half portion CTS No.2773 in the name of plaintiff and plaintiff is not in actual possession of suit property. However, the plaintiff valued suit property under Section 35(2) of KCF and SV Act 1958 as such, the valuation made by plaintiff is not proper. The defendant contended that, plaintiff has to value suit property as per market value of the property and pay court fee on the market value, therefore, the court fee paid by plaintiff is not proper.

**23.** On perusal of records, it is the contention of plaintiff that he and defendant are joint owner of suit property and his name was entered in CTS records on 29.05.1986. Thereafter, he and defendant got partitioned said property orally and running business. If these contentions are taken into consideration , it appears that plaintiff and defendant have divided suit property prior to the institution of this suit. Therefore, they are not in joint possession of the suit property. Further, on perusal of records, the property in possession of plaintiff is numbered as B-642 and property in possession of defendant is numbered as B-643, it also proves that suit property was already divided between plaintiff and defendant and their names separately entered. Further, plaintiff has not produced a single document to show that property No.B-642 is part of CTS No.2773. Though the plaintiff has produced Ex.P.7 tax paid receipt, Ex.P.8 letter

issued by Chief Officer, Town Panchayat, Haliyal, Ex.P.12 office memo, Ex.P.13 to 30 objection, tax paid receipt and rent agreements and it is certified that, property No. B-642 and B-643 are situated at CTS No.2773 and its original Khata number in the year 1985-86 was B/373 but, said documents and certificate were issued only for the purpose of taking electricity connection. Further, on perusal of Ex.P.12 it is clearly stated that though it is certified that, property number B-642 and B-643 are situated at CTS No.2773 and its original Khata number in the year 1985-86 was B/373 but, there are no resolutions to that effect. Therefore, the HESCOM has taken bond from the plaintiff stating that if any objection raised regarding house B/373 is renumbered as B-642, he is only responsible. Therefore, it is proved that, no documents are there to show that Property Khatha No.B-642 and B/373 are one and the same. Further, though the plaintiff has produced Ex.P.20 to 29 i.e., rent agreements, to show that he is in possession of half portion of CTS No.2773 and it is numbered as B-642 and he has given it on rent to one Irshad Bahadurkhan Lohani but, said property number was not mentioned in Ex.P.20 to 29. The number mentioned in said rent agreements is B/373. Therefore, at this stage plaintiff has not clarified that property situated at CTS No.2773 are originally numbered as B/373 and now it is renumbered as B-642 and B-643. Therefore, plaintiff failed to prove his possession over suit property. Under these circumstances, he has to value the suit property under Section 35 (1) of KCF and SV Act. However, plaintiff has valued suit property under Section 35(2) of KCF and SV Act and paid court

fee, as such the valuation made by the plaintiff is not proper.  
**Hence, I answer Issue No.2 in the Affirmative.**

**24. ISSUE No.3** It is the contention of defendant that, he has denied the right title and interest of plaintiff over CTS No.2773 and also denied his possession over suit property. In spite of it, plaintiff has not sought the relief of declaration of his title over suit property. Therefore, suit of the plaintiff in the present form is not maintainable.

**25.** In the written statement defendant specifically contended that, suit property was exclusively purchased by him through a registered sale deed dated 20.02.1984 and he is in exclusive possession of the same. In spite of such contentions, plaintiff has not sought the relief of declaration that, he is owner of suit property. At this stage, it is proper to refer judgment reported in **Anathula Sudhakar V. P. Bhuchi Reddy (dead) by Lrs & Ors, AIR 2008 SC 2033**, wherein the Hon'ble Apex Court held that, when plaintiff's title is disputed and plaintiff lacks possession, the proper remedy is a suit for declaration and possession, with or without injunction. When the plaintiff's title is undisputed but plaintiff lacks possession, the correct action is a suit for possession with consequential injunction. When there is mere interference with lawful possession or threat of dispossession, a suit for injunction simplicitor is sufficient. In the case on hand, the defendant specifically denied the title of plaintiff over the suit property. Under these circumstances, the title of plaintiff is under cloud. In spite of the same plaintiff failed

to seek the relief of declaration of his ownership over the suit property against defendant. Therefore, without seeking such relief the suit in the present form is not maintainable. **Hence, I answer Issue No.3 in the Affirmative.**

**26. ISSUE No.4 and 5:** It is the contention of defendant that, father of plaintiff and defendant Modinsab Dalal died living behind 04 sons and 02 daughters, none of them claiming any interest in the suit property except plaintiff . Further the suit is one for partition and CTS No.1630 to 1637 of Haliyal are purchased in the name of wife of plaintiff however, those properties are not included in the suit. Further the plaintiff has not disclosed entire genealogy of his father Modinsab Dalal and the properties owned by him. The plaintiff has not made all the legal heirs of Modinsab as parties to this suit. Therefore, the suit is bad for non-inclusion of family properties and non-joinder of necessary parties.

**27.** On perusal of records, it is clear that, plaintiff and defendant are own brothers and belongs to Muslim Community, as such, they are governed by Muslim Law. It is settle law that, there is no joint tenancy in Mahamadan Law and the heirs are only tenants-in-common. Therefore, an heir can claim partition in respect of one of the properties held in common without seeking partition of all the properties. Further, under Mohamadan Law, interest of each heir is separate and distinct. A suit for partition of his share by one of the heirs is maintainable even if the heirs who are not in possession are not impleaded,

since the share of Mahamadan heirs are definite and specific. Further, in **Khazir Bhat V/s Ahmad Dar, AIR 1960 J & K**, the hon'ble Court held that, doctrine of partial partition is applicable only to Hindus, where the coparceners are joint in estate and not to Muslims, who are only tenants in common. Under the Mohamadan law, the heirs of a deceased Muslim succeed to a definite fraction of every part of his estate. Muslim sharers are not obliged to sue for partition for all the properties in which they are interested. There is nothing to preclude one of them from seeking a partition of some of the items of the properties. Therefore, under Muslim law an heir can seek partition only with respect to one property held as tenants in common. It is also clear that, a suit for partition by one sharer against only one heir is maintainable. Therefore, contention of defendant that, suit is bad for non-joinder of necessary parties and non-inclusion of all the properties is not acceptable. **Hence, I answer Issue No.4 and 5 in the Negative.**

**28. ISSUE No.6:** In view of discussion on above issues plaintiff failed to prove that, he and defendant are joint owners of suit property and he is having  $\frac{1}{2}$  shares in the suit property. It is proved that suit property exclusively purchased by defendant through a registered sale deed and he is in possession of the same. Under these circumstances, plaintiff is not entitled for the relief of partition and separate possession of his  $\frac{1}{2}$  share in the suit property. **Hence, I answer Issue No.6 in the Negative.**

**29. ISSUE NO.7:** In view of the discussion on above Issues and for the reasons stated therein, I proceed to pass the following:

**ORDER**

**Suit of the plaintiff is hereby  
dismissed with costs.**

**Draw decree accordingly.**

(Dictated to the Stenographer, transcribed and typed by her,  
then corrected, signed and pronounced by me in the Open Court on  
this the 23<sup>rd</sup> day April, 2026)

**Sd/-  
(Geeta)  
Civil Judge and JMFC,  
Haliyal**

**ANNEXURE**

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

PW.1 : Sri. Abdul Ajj Modinsab Dalal  
PW.2 : Sri. Imtiyaz Mohammadghori Basarikatti

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

Ex.P.1 : General Power of Attorney  
Ex.P.2 : CTS extract of property bearing CTS No.2773  
Ex.P.3 : Tax Assessment Extract for the year 2021-22  
Ex.P.4 : Javab Baism  
Ex.P.5 : Notice issued by City Surveyor, Haliyal to defendant  
Ex.P.6 : Letter given by defendant to City Survey Office  
Ex.P.7 : Tax paid receipt dated 02.03.2022

- Ex.P.8 : Letter dated 27.07.2012 issued by Chief Officer to plaintiff
- Ex.P.9 to 11: Photos and CD of suit property
- Ex.P.12 : Letter issued by HESCOM, Haliyal dated 08.04.2022
- Ex.P.13 : No objection letter issued by Chief Office, Haliyal
- Ex.P.14to19 : Tax paid receipts
- Ex.P.20to29: Rent Agreements entered between plaintiff and one Irshadkhan Lohani with respect to property No.B/373.
- Ex.P.30 :Certificate issued Chief Officer, Town Municipality, Haliyal

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

- DW.1 : Sri. Abdul Shikur Modinsab Dalal.

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

- Ex.D1 : Photo
- Ex.D2 : Tax Assessment extract for the year 2022-23
- Ex.D3 & 4 : Photo
- Ex.D5 : Tax Assessment extract for the year 2022-23
- Ex.D6 : Photo
- Ex.D.7 : Tax Assessment extract for the year 2023-24
- Ex.D.8 : Sale deed dated 20.02.1984 executed by Chief Officer, Town Municipality, Haliyal
- Ex.D.9 : Ruled card of CTS No.2773
- Ex.D.10 : CTS map of property No.2778,
- Ex.D.11to17: Tax paid receipts
- Ex.D.18 : Electricity bill for the month of July 2010 to February 2024.

- Ex.D.19 : Tax Demand Register Extract  
Ex.D.20 : No objection letter issued by Chief Officer, Town Municipality, Haliyal  
Ex.D.21 : Registration Certificate wherein, the name of Mahammed Imran Abdul Shikur Dalal  
Ex.D.22 : Letter given by defendant to Chief Officer, Town Municipality, Haliyal.

**V. LIST OF WITNESSES EXAMINED ON BEHALF OF THE COURT**

CW.1 : Ravi Yallappa Pattihal

**VI. LIST OF DOCUMENTS MARKED ON BEHALF OF THE COURT:**

- Ex.C1 : Authorization Letter  
Ex.C2 : Attested copy of Tax Demand Extract of Property Khata no. B-642 and B-643  
Ex.C3 & 4 : CTS Extract of property No. 2773 and Map.

Sd/-

**(Geeta)**  
**Civil Judge and JMFC,**  
**Haliyal**