

KAUK520004722020



Presented on : 13-11-2020
Registered on : 13-11-2020
Decided on : 05-08-2026

IN THE COURT OF
SNR. CIVIL JUDGE AND JMFC COURT, HALIYAL AT
HALIYAL,UTTARA KANNADA

Present : **SMT.SUJATA SIDAGOUDA PATIL, B.Sc., LL.B.,**
Senior Civil Judge & JMFC., Haliyal.

ORIGINAL SUIT No.28/2020

DATED THIS THE 05th DAY OF AUGUST 2026

PLAINTIFF :

1. UFM Sri Shailesh S/o Mohan Naik
Age: 53 years, Occ : Agriculture
R/o: Joida, (U.K) Now at 61/1809
Laxmi Co Operative Housing Society Patnagar
Ghatkoper, East Mumbai, Maharashtra

(Plaintiff by Sri.L.S.A.,Adv)

V/s.

DEFENDANTS:

1. Smt Nirmala W/o Sadanand Nayak
Age: 75 years, Occ : Household
R/o: Mhalasa Road Kajubag Karwar (U.K)
2. Sri. Gokulkumar S/o Sadanand Nayak
Age: 58 years, Occ : Business
R/o: Mhalasa Road, Kajubag Karwar (U.K)

3. Sri. Sunil S/o Sadanand Nayak
Age: 53 years, Occ: Business
R/o: Mhalasa Road, Kajubag Karwar (U.K)
4. Alka D/o Sadanand Nayak @
Smt. Archana W.o Bhaskar Nayak
Age: 55 years, Occ: Household
R/o: Mhalasa Road, Kajubag Karwar (U.K)
5. Chaya D/o Sadanand Nayak
@ Chaya W.o Sridhar Bhat
Age: 50 years, Occ: Household
R/o: Mhalasa Road, Kajubag Karwar (U.K)
6. Ssri. Bhikkaji S/o Narayan Desai
Age: 70 years, Occ: Agriculture
R/o: Panjeli Post Nagoda, Tq. Joida
Dist: Uttar Kannada.
7. Shri Sayyed K Tangal
Deceased by his LRs
 - a) Smt. Bibi Maryam W/o late Sayyed Tangal
Age: 49 years, Occ: Household
 - b) Kumari. Samee D/o late Sayyed Tangal
Age: 24 years, Occ: Student
 - c) Kumari. Sheza D/o late Sayyed Tangal
Age: 13 years, Minor
Rep by her mother natural guardian
Smt. Bibi Maryam W/o Sayyed Tangal
R/o: Township Dandeli (U.K)

**(Deft No.1 to 5 by Sri. P.K.J., Adv,
Deft No.6 by Sri. V.S.J./M.V.A., Advs,
Deft No.7 (a to c) by Sri. S.K.S.,
A.F.K., Advs)**

Date of Institution of Suit	:	13-11-2020		
Nature of Suit	:	Suit for Declaration and Injunction separate		
Date of commencement of recording of evidence	:	25-07-2025		
Date of pronouncement of Judgment.	:	05-08-2026		
Total Duration	:	<u>Year/s</u>	<u>Month/s</u>	<u>Day/s</u>
		05	08	22

J U D G M E N T

This suit is filed by the plaintiff against defendants seeking partition and separate possession of 1/2 legitimate share of his joint family in the suit schedule property along with declaration relief with respect to the sale deeds executed with respect to the suit schedule property are null and void not binding on the plaintiff's family.

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

An agricultural land bearing Survey No.123 Hissa 2 measuring 08-22-00 assessed at Rs.5-65 of Joida Village of Joida Taluka U.K. bounded by survey stones:

3. The case of the plaintiff's in brief is as under:

The parties are Hindus governed by Hindu Law, and the suit property is their ancestral property in joint possession and enjoyment. Following the death of the common ancestor, late

Sri Damodar Madhav Naik, his two sons—late Sri Sadanand Damodar Naik (husband of defendant No. 1 and father of defendants No. 2 to 5) and late Sri Mohan Damodar Naik (father of the plaintiff) succeeded to the property as recorded in M.E. No. 1659 of Joida village and only name of Sadananda was appeared in the RTC of the suit property. But were reflected as joint owners. Upon Mohan Damodar Naik's death on 29-06-1994, his branch, headed by the plaintiff, collectively inherited a $\frac{1}{2}$ share, while Sadanand Damodar Naik's death on 21-07-1998 led to defendants No. 1 to 5 collectively inheriting his $\frac{1}{2}$ share as per Joida M.R. No. H1 dated 14-08-2017. Despite no registered partition deed, decree from a competent civil court, or partition by metes and bounds having ever taken place, defendants No. 1 to 5 unlawfully alienated the entire suit property without the knowledge or consent of the plaintiff's branch by executing a registered sale deed in favor of defendant No. 6 at Deed No.3567 dated 26-03-2019 in the Sub-Registrar Office, Haliyal, subsequently causing Joida M.R. No.H26 dated 14-06-2019 to record defendant No. 6's name in the RTC. As defendants No. 1 to 5 possessed no right or title over the plaintiff's $\frac{1}{2}$ share, the said sale deed and M.R. No.H26 are illegal, void ab-initio, and non-binding;

nevertheless, defendant No.6 subsequently resold the suit property to defendant No.7 under registered Deed No.1336 dated 09-12-2020 at the Sub-Registrar Office, Haliyal. Although the plaintiff preferred an appeal before the Assistant Commissioner, Karwar on 03-12-2019 to rectify the revenue entries, the revenue authorities directed the plaintiff to seek relief in the Civil Court due to the existence of registered sale deeds, thereby constraining the plaintiff to file the present suit.

4. After registration of the suit of the plaintiff, court has issued process to the defendants. All defendants appeared independently. Among them Defendant No. 7(a), the wife, and Defendant Nos. 7(b) and 7(c), the children of the deceased Sri Sayed K. Thangal (who passed away on May 5, 2021, leading to their impleadment) is legally maintainable neither on facts nor in law and is liable to be dismissed for lack of a cause of action. While the description of the suit property is admitted, all unadmitted averments, including the genealogy and alleged family relationships, are denied and the plaintiff is put to strict proof thereof. The suit property was originally reflected in the revenue records (RTC) under the names of Defendant Nos. 1 to 5 vide MR No. H1 dated August

14, 2017, an entry which the plaintiff never challenged. Defendant Nos. 1 to 5 executed a registered Sale Deed dated March 26, 2019 (Document No. 3567) in favor of Defendant No. 6, whose name was subsequently mutated in revenue records vide MR No.H26 dated June 14, 2019. Subsequently, Defendant No. 6 executed a registered Sale Deed dated December 9, 2020 (Document No. 1336) in favor of Sri Sayed K. Thangal, who purchased the property for valuable consideration for agricultural purposes. Both Defendant No. 6 and Sri Sayed K. Thangal acted as bona fide purchasers relying on valid revenue entries. The plaintiff's claim of a 1/2 share and allegations that the transactions are non-binding are false, vexatious, and self-serving attempts at wrongful gain. Granting any share to the plaintiff would cause irreparable hardship and injustice to Defendant Nos. 7(a) to 7(c). Hence, prayed for dismissal of the suit with cost.

5. On the basis of the pleadings of the plaintiffs following issues arose for my consideration:

ISSUES

1. Whether plaintiff proves that, the suit schedule property is ancestral property of his family and defendant No.1 to 5 and there is no partition held among them?
2. Whether plaintiff proves that his family is entitle for 1/2 share in the suit schedule property?

3. Whether plaintiff is entitle for declaration relief with respect to registered sale deed executed by the defendant No.1 to 5 on 26.03.2019 and on 09-12-2020 as prayed in?
4. Whether defendant No.7(a to c) prove that they are bonafide purchasers of the suit property?
5. What reliefs parties are entitle?
6. What decree or order?

6. In support of the case of the plaintiff himself has been examined before the Court as PW.1 and produced documents which are got marked as Ex.P.1 to Ex.P.10. Defendant No.6 got examined as DW.1 and the GPA holder of Defendant No.7 (a) to (c) get examined as DW.2 and produced documents which are got marked as Ex.D.1 to D.2.

7. Heard the arguments. Perused the records placed before the court.

8. My answers to the above issues are as follows:

Issue No.1 : In the Affirmative

Issue No.2 : In the Affirmative

Issue No.3 : In the Affirmative

Issue No.4 : In the Negative

Issue No.5 : In the Affirmative

Issue No.6 : As per final order for the following:

REASONS

9. Issues No.1 to 3:- As these issues are inter related to each other, involved common appreciation of facts and evidence on record. Hence in order to avoid the repetition of same facts and circumstances, I took these points for common discussion.

In order to prove the prima facie case of the plaintiff he himself get examined as PW.1 and narrated entire bundle of factors mentioned under the plaint. PW.1 who being plaintiff No.2 gave evidence on his behalf and on behalf of all plaintiffs who being Kartha of their joint family file this suit on behalf of undivided joint family and stated that suit schedule properties are ancestral property inherited by his deceased father along with the deceased husband of defendant No.1 and father of the defendant No.2 to 5. There is no any partition held among them. Hence, till today they holds joint possession over the suit schedule property. The suit schedule property originally owned by their grandfather by name Damodar Mahadev Naik. After his death, plaintiff's father and father of defendant No.2 to 5 have succeeded. But the name of the father of the defendant No.2 to 5 has been shown in property extract through ME No.1659. After his death on 21/07/1998, the defendant No.1 to 5

who being the legal heirs of the deceased Sadanand get entered their name to entire extent of the suit property and entered into sale transaction with defendant No.6 on 26/03/2019 based on this registered sale deed the name of the defendant No.6 has been get entered in RTC through MR No.H26 dated 14/06/2019. This sale transaction made by the defendant No.1 to 5 behind and back of the plaintiff's family. In order to deprive them, seek $\frac{1}{2}$ share in the suit schedule property. When they approached the defendants and asked for their share at that time, defendant No.1 to 5 are not responded properly. Hence, plaintiffs approached court with present suit. After filing of this suit, defendant No.6 has sold the suit property in favor of defendant No.7. During pendant of this suit, after getting registered sale deed, defendant No.7 reported dead and his LR's have been brought on record. Hence, PW1 prays for their $\frac{1}{2}$ legitimate share in the suit property by declaring the sale deeds executed in favor of defendant No.6 and in favor of deceased defendant No.7 are not binding on them.

10. In order to prove their case and to support their oral evidence, PW1 produced RTC extracts of suit property, certified copies of those two sale deeds along with MR No.H26 and ME

No.1659. They also produced MR No.H/1 and RTC of suit schedule properties which have been marked under Ex.P 1 to 8. He too produced ME No.H/1 and certified copy of the RTC appeal preferred by the PW1 are marked under Ex.P9 and 10. During his cross examination, he deposed that initially they were born and brought up at Mumbai. Later on, he has shifted to Goa since 07 years back and he admitted the existence of name of the defendant No.1 to 5 after death of Sadanand Damodar Naik, i.e., father of the defendant No.2 to 5, but they had joint possession over suit property with faith on the defendant No.1 to 5. But defendants' counsel denied his status of karta in his joint family, but he represented entire undivided joint family on behalf of all legal heirs of his father. He filed present suit and deposed on behalf of himself and on behalf of other members. He admits the sale transaction held in favor of defendant No.6 as well as in favor of deceased defendant No.7, but those sales have been executed without consent of the plaintiffs. By representing their father, they have $\frac{1}{2}$ share in the suit schedule property. Hence, the defendants' counsel denied the existence of joint family and joint possession over the suit schedule property along with defendant No.1 to 5. But it is specifically suggested that if $\frac{1}{2}$ share is given to them

in the suit property, he will agree for that allotment and ready to get settle the dispute held among plaintiffs and defendants, as the defendant No.1 to 5 who sold the suit property in their absence have remained absent, not contested the suit. But the LRs of defendant No.7 who holds possession over entire suit schedule property are offered to PW1 for giving of ½ share in the suit schedule property irrespective of the sale deed which was executed in their favor of deceased defendant No.7.

11. In order to defend the suit of the plaintiff, the defendant No.6 get examined as DW1 by filing his affidavit saying that he purchased the suit property from defendant No.1 to 5 on 26/03/2019 and thereafter he sold it in favor of deceased defendant No.7. Further he deposed that as on date of registered sale deed executed in favor of deceased defendant No.7, the family of the D.7 are having possession over the suit schedule property. But during his cross examination, he deposed that he has not made genuine proper inquiry before entering into sale transaction with defendant No.1 to 5 as the name of the defendant No.1 to 5 were appeared in the property extract, but he has not made inquiry about their joint family genealogy and about the ½ share of deceased Mohan, none other

than plaintiff's father. He disclosed that after receipt of suit summons, he made inquiry and came to know about existence of plaintiff's 1/2 share in the suit schedule property. Hence, the plaintiff's counsel has suggested that without inquiry, the sale transaction done by the defendant No.6 with respect to the suit schedule property. Hence, he cannot be called as a bonafide purchaser. Very suggestion is denied by the defendant No.6. Further by representing Lrs of deceased defendant No.7, i.e., the GPA holder of defendant No.7(a) to (c), get examined as DW2 and deposed that defendant No.7 died on 05/05/2021, who purchased this suit property from defendant No.6.

12. In order to prove the bonafide role played by the defendant No.6, he has not placed any documentary evidence such as paper publication or inquiry made in concerned revenue authority, get some relevant documents like genealogy of deceased Damodar Mahadev Damodar Mahadev Nayak.

13. On the other hand the GPA holder of Lrs deceased defendant No.7 get examined as DW.2 and deposed that defendant No.7 has purchased the suit schedule property from defendant No.6 through registered sale deed based on the registered sale deed which

was executed in favor of defendant No.6 by defendant No.1 to 5 and the name of the defendant No.6 was well existed in the property extract. Hence by presuming defendant No.6 as rightful owner of the suit property he entered into sale transaction and executed registered sale deed on 09/12/2020. During his cross examination, he shown some ignorance of pleading, by stating that he is not aware of transaction held between defendant No.6 and 7 and the LRs of defendant No.7 came to know about legitimate $\frac{1}{2}$ share of the plaintiffs in suit property after receipt of suit summons. Apart of this oral evidence, they produced no documentary evidence to show that deceased defendant No.7 has taken appropriate steps to claim himself as a bonafide purchaser while purchasing of the suit property.

14. After careful scrutiny of entire oral and documentary evidence placed by the both parties. It reveals that suit schedule property is ancestral property of plaintiffs and defendant No.1 to 5 and there is no partition among them. In absence of such partition, it is legally presumed that plaintiffs are having $\frac{1}{2}$ share in the suit schedule property. But during lifetime of Sadanand and Mohan, who are children of the original ancestor, Sri Damodar Mahadev Naik.

After his death, the name of the Sadanand has been get entered as a karta and it remains continuously without mutation the name of the Mohan. After death of Sadanand, defendant No.1 to 5 succeeded in get entered of their names in the property extract of the suit property and took advantage of it and sold the suit property in favor of defendant No.6. Further it is observed that while entering into sale transaction, defendant No.6 who is well resident of Joida where the suit property is situated, has not made proper inquiry of history of the suit schedule property, nor taken paper publication by cautioning the rival payments of the suit property. In absence of such appropriate steps, defendant No.6 cannot said to be a bonafide purchaser of the suit schedule property.

15. On the contrary it is observed that, deceased Sadanand Naik i.e., father of the defendant No.1 to 5 not acquired suit property on his individual capacity but with due consent his brother deceased Mohan, as a Karta his name has been entered into property extract of the suit property. After his death defendant No.1 to 5 succeeded into entering their names in the property extract of suit property. Thereafter they sold enter property in favour of defendant No.6. But they have no legal authority to sell ½ share of suit property. Despite

they remained exparte not contested the suit in order to prove as there was partition held among deceased Sadanand and Mohan. In absence of any such oral and documentary proof it is legally presumed that there was no partition held among plaintiffs branch and branch of the defendant No.1 to 5. Therefore until and unless partition takes place among plaintiffs' family and family of defendant No.1 to 5, plaintiff's family has right, title interest over every inch of suit schedule property though suit property was standing in the name of defendant No.1 to 5.

16. To that effect, I would like to highlight below mentioned reported judgment held in **RFA No.432/2026, decided on 27.03.2026, held in between Smt. Suma Reddy V/s Muniraja Reddy and others**, wherein it has been held that the suit property was allotted in favor of plaintiff's father, i.e., defendant No.1, in which plaintiff Suma Reddy claimed share by filing a partition suit and at the time of conclusion of trial, the defendants approached with interim application under Order 7 Rule 11(a) and (d) of CPC for rejection of the plaint and trial court has rejected by saying that plaintiff has no share, she being a daughter of defendant No.1 and elder sister of the defendant No.2, the father has sold some portion

of land without intimating the daughter in which the defendant No.1 obtained the suit property through partition deed dated 03.05.2006 therefore, it being a joint family ancestral property. The plaintiff approached her father and brother seeking partition, they declined to effect the partition. Thereafter, she filed partition suit wherein defendants filed interim application for rejection of the plaint. Accordingly, trial court has allowed the interim application and rejected the plaint by saying that the father of the plaintiff derived 09 attempts of the properties as per partition deed and all those properties are self-acquired properties of her father and during his lifetime, plaintiff cannot claim her share in the properties of the defendant No.1. As he had succeeded those properties on his individual capacity and not as a Karta of the family. The suit properties under that suit where self acquisition of defendant No.1 by virtue of Section 8 of Hindu Succession Act and the trial court took shelter under reported judgment held in between **Mrs Mallika and others V/s Mr. Chandrappa and others, ILR 2007 Karnataka 3216** by holding that plaintiff has no right to seek partition in suit properties as the suit property has been inherited by her father on his individual capacity. So no cause of action arose to file the

partition suit. Very order has been challenged by the plaintiff in which Hon'ble High Court of Karnataka has held that the properties which was derived by the father of the plaintiff through partition deed dated 03.05.2006 was not on his individual capacity as on date of partition deed, i.e., on 03.05.2006, the plaintiff and defendant No.2 were already born, which mean that they 02 were entitled to an undivided interest in those properties, and they become co-parcener along with their father. Hence, appeal is allowed by saying that the defendant No.1 being the Karta of the joint family property and plaintiff is entitled to share in the order passed application for rejection of plaint is set aside and restored the suit of the plaintiff by directing the parties to appear before the trial court to proceed with the suit.

17. Therefore in absence of partition plaintiff's family has its legitimate share in the suit property and defendant No.1 to 5 have no full authority to sell it in favour of defendant No.6. Thereafter, the defendant No.7, who being resident of Dandeli, also not made any proper inquiry while purchasing of the suit property. Hence both sale deed executed on 26/03/2019 and on 09/12/2020 with respect to the suit property are declared to be not binding on legitimate $\frac{1}{2}$ share in

the suit schedule property. Consequently it has been held that the defendant No.6 and defendant No.7 are not bonafide purchaser of the suit property. Hence, plaintiffs are entitled for their legitimate $\frac{1}{2}$ share in the suit property. As it is, their ancestral property and till today there is no partition held among plaintiff and defendant No.1 to 5. Therefore, **I answer Issue No.1 to 3 in Affirmative.**

18. ISSUE NO.4: As discussed in Supra, the defendant No.7(a) to (c), they themselves claimed as a bonafide purchaser through their deceased father with respect to the suit property as they are having continuous possession over suit property since the date of execution of registered sale deed on 09/12/2020, which was executed by the defendant No.6 in favor of deceased defendant No.7, during pendent of the suit. Hence defendant No.7 step in the shoe of defendant No.6, despite the defendant No.7 and his Lrs have not taken appropriate step before purchasing a property and not inquired about $\frac{1}{2}$ share of the plaintiffs in the suit schedule property. Hence, they are not called to be bonafide purchaser of suit property. **Hence, I answer Issue No.4 in Negative.**

19. ISSUE No.5: In this suit, the plaintiffs have put better efforts to prove that suit schedule property is joint family property

inherited by their fathers through their deceased grandfather Damodar Mahadev Naik. Hence, it is ancestral property of the plaintiffs and defendant No.1 to 5 and there is no partition held among them. Therefore, further they proved registered sale deed executed by the defendant No.1 to 5 in favor of defendant No.6 on 26/03/2019 and the registered sale deed executed on 09/12/2020 in favor of deceased defendant No.7 are not binding on the plaintiffs $\frac{1}{2}$ share, in the suit schedule property. Therefore, plaintiffs are entitled to get declared their $\frac{1}{2}$ legitimate share in the suit schedule property as prayed in the suit. **Hence, I answer Issue No.5 in Affirmative.**

20. Issue No.6: In view of the above said findings on the above said Issues, I proceed to pass the following:

ORDER

Suit of the plaintiff is hereby decreed.

Plaintiff is entitled for $\frac{1}{2}$ legitimate share in suit schedule property. The Registered sale deeds dated 26-03-2019 and 09-12-2020 are not binding on the plaintiff's share.

Parties are to bear their own cost.

Draw up preliminary decree accordingly

*(Dictated to the Stenographer transcribed & typed by him, the same is corrected, signed and then pronounced by me in the open court on this the **05th day of August 2026**).*

(SMT.SUJATA SIDAGOUDA PATIL)
Senior Civil Judge & JMFC, Haliyal.

ANNEXURE

1. **List of witness examined on behalf of plaintiff :**

PW.1 : Sri. Shailesh S/o Mohan Naik

2. **List of documents exhibited on behalf of plaintiff:**

Ex.P.1 : RTC extract of Sy No.123/2

Ex.P.2 & 3 : 2 Sale deeds

Ex.P.4 : MR No.H/26

Ex.P.5 : ME No.1659

Ex.P.6 : MR No.H/1, 123*/*

Ex.P.7 : RTC 123*/*

Ex.P.8 : RTC from 1964 to 2017-18

Ex.P.9 : Application

Ex.P.10 : RTC appeal

3. **List of witness examined on behalf of defendants :**

DW.1 : Sri. Bhikkaji S/o Narayan Desai

DW.2 : Gouse Mohiddin Abdul Karim Khatib

4. **List of documents exhibited on behalf of defendants**

Ex.D.1 : Original GPA document

Ex.D.2 : Aadhar card

(SMT.SUJATA SIDAGOUDA PATIL)
Senior Civil Judge & JMFC, Haliyal.