

KAUK520008502024



Presented on : 19-08-2024
Registered on : 19-08-2024
Decided on : 04-07-2026

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

Present : Smt. Sujata Sidagouda Patil, B.Sc., LLB.,
Senior Civil Judge & Prl. JMFC., Haliyal.

REGULAR APPEAL No.28 OF 2024

DATED THIS THE 4th DAY OF July 2026

APPELLANT:

(Ori. Defendant No.1)

Sri. Channappa S/o Ramray Gouda,
Age: 72 years, Occ: Agricultural
R/o: Nagashettikoppa Village,
Tq: Haliyal, Dist: Uttar Kannada.

[Sri.B.N.M, Adv.]

// V/s. //

RESPONDENTS:

(Ori. Plaintiff No.1 & Defendants)

1. Smt. Basavanni Tukaram Ghadi
Age: 78 years, Occ: Agricultural
R/o. Nagashettikoppa Village,
Tq: Haliyal, Dist: Uttar Kannada.

2. Smt. Anusuya W/o Parashuram Gouda,
Age: 64 years, Occ: Agriculture,
R/o. Nagashettikoppa Village,
Tq: Haliyal, Dist: Uttar Kannada.
3. Smt. Ningavva Irappa Jogannavar,
Age: 47 years, Occ: Agriculture,
R/o. Nagashettikoppa Village,
Tq: Haliyal, Dist: Uttar Kannada.
4. Sri. Jyotiba Parashuram Gouda,
Age: 42 years, Occ: Agriculture,
R/o. Nagashettikoppa Village,
Tq: Haliyal, Dist: Uttar Kannada.
5. Smt. Sharada W/o Bharmanna
Dharwadkar,
Age: 47 years, Occ: Agriculture,
R/o. Doddakoppa Village,
Tq: Haliyal, Dist: Uttar Kannada.
6. Sri. Peeshappa S/o Parashuram Gouda,
Age: 32 years, Occ: Agriculture,
R/o. Nagashettikoppa Village,
Tq: Haliyal, Dist: Uttar Kannada.
7. Smt. Renuka W/o Manohar Pujari,
Age: 37 years, Occ: Agriculture,
R/o. Satnalli Village, Tq: Haliyal,
Dist: Uttar Kannada.
8. Smt. Renuka W/o Dyanenshwar
Bhatkande,
Age: 34 years, Occ: Agriculture,
R/o. Nagashettikoppa Village,
Tq: Haliyal, Dist: Uttar Kannada.

9. Smt. Parvati W/o Ashok Desurkar,
Age: 47 years, Occ: Agriculture,
R/o. Nagashettikoppa Village,
Tq: Haliyal, Dist: Uttar Kannada.
10. Sri. Subhash S/o Yallari Mungudi,
Since deceased by Lrs
- 10(a) Renuka Yallari Vargouda
Age: Major, Occ: Housewife
R/o: Kalaginkoppa, Tq: Haliyal.
- 10(b) Arun S Mungodi S/o Subhas
Age: 27 years, Occ: Agricultural
R/o: Hampehalli, Kawalwada,
Dist: Uttar Kannada.
- 10(c) Kiran S Mungodi S/o Subhas
Age: 24 years, Occ: Agricultural
R/o: Hampehalli, Kawalwada,
Dist: Uttar Kannada.
- 10(d) Laxmi W/o Subhas Mungudi
Age: 52 years, Occ: Housewife
R/o: Hampehalli, Kawalwada,
Dist: Uttar Kannada.
11. Sri. Devendra S/o Yallari Mungudi,
Age: 47 years, Occ: Agriculture,
R/o. Hampiholi Village,
Tq: Haliyal, Dist: Uttar Kannada.
12. Smt. Naguli W/o Fakkeera Gouda,
Age: 63 years, Occ: Agriculture,

13. Smt. Bharati W/o Chandrakant Javalkar,
Age: 30 years, Occ: Agriculture,
R/o. Pradanatti, Post: B.K. Halli Village,
Tq: Haliyal, Dist: Uttar Kannada.
14. Smt. Tulasakka W/o Sahadev Marathi,
Age: 47 years, Occ: Agriculture,
R/o. Sankankoppa Village,
Tq: Haliyal, Dist: Uttar Kannada.
15. Sri. Ningappa S/o Yallari Mungudi,
Age: 34 years, Occ: Agriculture,
R/o. Hampiholi Village,
Tq: Haliyal, Dist: Uttar Kannada.
16. Smt. Naguli W/o Fakkeera Gouda,
Age: 42 years, Occ: Agriculture,
R/o. Nagashettikoppa Village,
Tq: Haliyal, Dist: Uttar Kannada.
17. Sri. Mohan S/o Fakkeera Gouda,
Age: 28 years, Occ: Agriculture,
R/o. Nagashettikoppa Village,
Tq: Haliyal, Dist: Uttar Kannada.
(Abeted as died without Class I heirs)
18. Sri. Anant S/o Fakkeera Gouda,
Age: 32 years, Occ: Agriculture,
R/o. Nagashettikoppa Village,
Tq: Haliyal, Dist: Uttar Kannada.
19. Smt. Rane @ Demakka W/o Ningappa
Mangudi, Age: 34 years, Occ: Agriculture,
R/o. Hampiholi Village,
Tq: Haliyal, Dist: Uttar Kannada.

20. Smt. Vanashri W/o Devendra Bangad,
Age: 37 years, Occ: Agriculture,
R/o. Ammankoppa Village,
Tq: Haliyal, Dist: Uttar Kannada.

**[R-1 By Sri. M.N.J/S.I.G, Adv.
R.2 to 9, 11, 13 to 16, 18 absent
R.10(a to c) By Sri. H.A.A., Adv,
R.10(d) By Sri. A.A.H Adv]**

**Date and nature of the decree:
or order appealed against**

Judgment and decree
passed in O.S.No.12/2022
dated 30.07.2024 by the
Civil Judge, Haliyal.

**Date of the institution of the :
appeal**

19-08-2024

Duration of the Appeal : Year/s Month/s Day/s
01 10 16

J U D G M E N T

This regular appeal under Section 96 R/w Order 41 Rule 1 of CPC is preferred by the appellant/defendant No.1 in O.S.No.12/2022 on the file of Civil Judge Court, Haliyal questioning the validity of the judgment passed thereon dtd.30.07.2024 whereby the suit of the plaintiffs is decreed.

2. For the sake of convenience parties are referred to as plaintiff and defendants as per their original ranking in the Court below.

3. The plaintiff filed suit for partition and separate possession.

4. Facts in brief on the side of plaintiff is that, plaintiff and defendants are joint family members. The propositus of the family by name Sri. Ramray Gouda and his wife Smt. Demakka were died long back by leaving behind them their children i.e., Parashuram, Basavanni, Yallavva, Channappa and Fakkeera. Out of the said five children, Parashuram, Yallavva and Fakkeera were died. The defendants No.2 to 8 are the legal heirs of deceased Sri. Parashuram. The defendants No.9 to 15 are the legal heirs of Smt. Yallavva. The defendants No.16 to 20 are the legal heirs of deceased Sri. Fakkeera. The plaintiff is the sister of Parashuram, Yallavva, Fakkeera and Channappa.

5. The suit schedule properties are Hindu Joint Family properties of plaintiff and defendants and they are in joint possession of the same. No partition held among plaintiff and defendants in respect of suit schedule properties by metes and bounds. The

plaintiff demanded partition in the suit schedule properties but, the same was denied by the defendants and as such, the plaintiff is constrained to file the present suit for the aforesaid relief.

6. After registration of this suit, Court has issued suit summons to the defendants. In pursuance of the same, the defendants No.1, 2, 7 and 12 have appeared before the Court through their counsel and rest of the defendants have placed exparte as they have failed to appear before the Court inspite of effective service of suit summons.

7. The defendant No.1 has filed the written statement and the same is adopted by the defendants No.2 and 12 by filing a memo. The defendant No.1 in his written statement has denied the nature of the suit schedule properties especially item No.3 which is land granted property of their father in which plaintiff who being married daughter has no share as it is not ancestral property. However, the defendant No.1 has admitted the genealogy furnished by the plaintiff but, denied that, the plaintiff and defendants are joint family members.

8. It is further contended in the written statement of defendant No.1 that, long years back, the propositus of the family

Sri. Ramray and his wife Smt. Demakka were died by leaving behind them their five children i.e., Parashuram, Basavanni, Yallavva, Channappa, Fakkeera and out of which, Parashuram, Yallavva and Fakkeera were died. About 65-70 years back, the marriage of the plaintiff was solemnized with one Sri. Tukaram Ghadi of Golehalli Village and her marriage was arranged by the father of the defendant No.1. After five years of said marriage, Sri. Tukaram Ghadi was died and thereafter, the plaintiff has got properties of her husband and leading her life. At the time of marriage, sufficient gold and other valuable articles have been given to the plaintiff and as such, after her marriage, the plaintiff is not the member of the family of defendants.

9. It is further contended in the written statement of defendant No.1 that, Item No.3 of the suit schedule property is granted by the Land Tribunal to the father of defendant No.1 and as such, the plaintiff cannot claim any share in the said property. The plaintiff is having 3 acres of land of her husband and leading a happy life but, by using law of a weapon and with greedy mind, the plaintiff has filed the present suit with an intention to harass the defendants. The defendant No.1 and other defendants are

cultivating their separate lands by dividing the suit schedule properties in apasat vatani process held about 30 years back and as such, the plaintiff is not having any right to claim partition in the same. With these facts and pleadings, the defendant No.1 prays to dismiss the suit.

10. On the basis of rival contention in the pleadings of parties and material on record, the following issues have been framed by Trial Court as under:

ISSUES

- 1) Whether the plaintiff proves that, the suit schedule properties are Hindu joint family properties of herself and defendants?
- 2) Whether the plaintiff proves that, she is entitled for 1/5th share in the suit schedule properties by way of partition and separate possession?
- 3) What order or decree?

11. In order to prove her case plaintiff has got examined herself as PW-1 and documents at Ex.P.1 to Ex.P.5. On the other hand, the defendant No.1 has got examined himself as DW.1 and got marked the documents at Ex.D1 to D5.

12. Trial Court after hearing the arguments of both side has answered issues No.1 and 2 in '**Affirmative**'; thereby the Trial Court has proceeded to decree the suit by declaring 1/5th share of the plaintiff in suit schedule properties.

13. Feeling aggrieved by judgment and decree passed by Trial court in O.S.No.12/2022 dated 30-07-2024, the appellant/defendant No.1 came up with present appeal challenging the correctness and validity of judgment and decree passed by Trial court, on the following grounds:

The Trial Court gravely erred in law and fact by failing to frame proper issues and drawing erroneous conclusions contrary to the record, specifically regarding Issues No. 1 and 2. The Court failed to apply its mind to the documentary evidence produced by the Appellant and wrongly presumed that Survey No. 23/3 of Golahalli Village is an ancestral coparcenary property. In truth, this land was a self-acquired property granted to the deceased/Defendant under the Tenancy Act, which strictly governs succession through direct tenancy heirship laws and precludes it from being subjected to a broader coparcenary partition.

Furthermore, the Lower Court failed to consider that the Appellant's age and date of birth—preceding the enforcement of the Hindu Succession Act, 1956—restrict the blind application of equal retrospective coparcenary rights over the remaining schedule properties. The Court ought to have applied the settled principles of law governing notional partition as they existed, rather than relying on flawed presumptions and speculative assumptions. By ignoring material facts and jumping to highly improper conclusions, the impugned judgment has resulted in a gross miscarriage of justice.

14. After registering the appeal and in response to service of notice, the respondents appeared through their counsel but not filed objection. Lower court records were received.

15. I heard argument from both side and perused the contents of written argument submitted by the counsel.

16. In view of the points canvassed in the course of argument and the grounds urged in the Appeal Memo, following points felt necessary for determination:

POINTS

- 1. Whether in given facts and circumstances of the case, trial court has erred in concluding of inherited right of the plaintiff over suit schedule properties without considering previous partition held among them?*

2. *Whether judgement and decree passed by trial court has to be interfered in present appeal?*

3. *What order?*

17. On meticulous considering entire material on record, I answer above points as follows:

Point No.1 : In Negative.

Point No.2 : In Negative.

Point No.3 : As per final order, for the following:

REASONS

18. **Points No.1 and 2:** As these points are interlinked involves common appreciation of facts and evidence on record. Hence in order to avoid repetition of facts and circumstances, I took these two points for common discussion.

In the appeal I have gone through the entire oral and documentary evidence produced by the both parties in OS No.12/2022. Basically the suit is filed by respondent No.1 seeking partition and separate possession against present appellant and rest of the respondents with respect to the suit schedule properties SI No.1 to 3. It is case of the plaintiff that there is no partition held among the parties as the suit schedule properties were inherited by

their deceased father Ramraya Gowda and his wife also died long back. Ramraya Gowda had 05 children by name Parashuram, Basavanni, Yellavva, Channappa and Fakira. Out of them only appellant and respondent No.1 were alive. Rest of 03 children died and their branch have been represented by respondent No.2 to 20. Out of suit schedule properties, SI No.1 and 2 properties are ancestral properties inherited by their deceased father Ramray Gowda and SI No.3 suit schedule property is granted property in favor of the deceased Ramray Gowda during his lifetime. The rest of children of the Ramray Gowda died 65 to 70 years back. To support her suit, plaintiff produced relevant documents like RTC of the suit schedule properties along with MR extracts through which it has been gathered that the plaintiff's name has been entered into property extracts of the all suit schedule property after death of the deceased Ramray. Hence, it is legally presumed that the respondent No.1, who being a plaintiff of the suit under appeal, legal heir of the deceased Ramray and her name has been entered into record along with other legal heirs. Therefore, it is legally presumed that the respondent No.1 is entitled for 1/5th share in the suit schedule property.

19. In order to resist the plaintiff's suit, the defendant No.1 has filed his written statement and same has been adopted by the defendant No.2 and 12. The defendants admitted the genealogy shown by the plaintiff in her plaint, but they denied her legal heirship under deceased Ramray by saying that she got married prior to 1956 and detached her legal heirship from joint family of the defendants. Furthermore, they have contended that suit schedule SI No.3 property is granted property. It is self-acquired property of the deceased Ramray in which the plaintiff has no legal right to seek partition, especially the defendant has follow up the principles discussed by the Hon'ble High Court of Karnataka in Nimbava and others V/s Chennaveerayya and others. In order to support their defense taken through their written statement, defendant No.1 get examined himself as DW1 and produced documents property extract has marked under Ex.D1 to D5. I have gone through the Ex.D1 to 5 among which as per Ex.D2 and 5, the plaintiff had considerable share in those properties bearing Sy No. 117*/* and 79*/* respectively and rest of properties shown under Ex.D1, 3 and 4, i.e., No. 116/2B, 104*/* and Sy No.80*/1A. These properties are solely owned by the plaintiff. Entirely she owns land around about 70 guntas. But these

documents produced by the DW1, i.e., present appellant are not become hurdle for decreeing of the suit as those properties shown under Ex.D1 to 5 have inherited by the plaintiff through her husband after his death, which will not become obstacle to seek partition in the joint family properties of her parental family. Hence, by considering all these material facts, trial court has passed judgment by decreeing the suit. As per appellant, it is ground described by the appellant is that the trial court has ignored the principles held by the Hon'ble High Court of Karnataka in reported case Nimbavva and others V/s Chanveerayya and others and not considered heirship guidelines to decide the case of the plaintiff.

20. I have gone through the very reported case held between Nimbavva and others V/s Chanveerayya and others in which the principles discussed to hold the membership of the married daughters case if suit property, landed property has been granted after death of original propositors and that land has been continuously cultivated by the joint family where married daughters are held that they were not entitled to seek the occupancy rights in granted land under the Land Reform Act. But the principles discussed in that case are not applicable in the present case as the disputed SI

No.3 suit property has been granted during the lifetime of deceased Ramaray. In that reported case, tenant was died and occupancy rights are granted at the later stage by the Land Tribunal, Succession is governed by the special provisions of Karnataka Land Reforms Act and not by the general provisions of the Hindu Succession Act. Family definition included spouse, minor sons and unmarried daughters as per Section 2 (12) of KLR Act and married daughters could not be claim share in the tenancy occupancy rights under the above said Act.

21. If father was alive when Land Tribunal was granted the occupancy rights in his own favor, then entire case factors become different from the Nimbavva case because father is to be alive as on date of granting of occupation right, but in that case, after the death of the father, the son has filed form No.7 and obtained occupancy rights by the male members. Therefore, married daughters have been excluded from seeking shares in the granted land. But in present case, original tenant was alive and obtained occupancy rights during his lifetime. As the father of the parties by name Ramray Gowda has filed form No.7(A) and completed legal process in order to get occupancy right. Hence, original occupancy right has been

granted in favor of the original tenant during his lifetime and who dies in testate, the property devolve on his legal heirs under the Hindu succession Act 1956. The names of all legal heirs have been entered into property extract. Further, it is observed that the appellant who being a defendant No.1 of the suit has not produced material documents to assess the age of the plaintiff and her date of marriage. In absence of such information, blindly the court cannot deprive the plaintiff from seeking share in the property. Further it is observed that out of them, the defendants are in enjoying the suit schedule properties jointly. Among them, the children of the deceased Ramray, who are none other than defendant No.16 to 20, not contested the suit. They gave up their rights in the suit schedule properties. But present plaintiff seeking partition willingly, her share has to be allotted and bifurcated. The defendant No.1 who has contested the suit led evidence produced documentary evidence Ex.P.1 to 5. But failed to prove previous partition. Only denial of membership of the plaintiff in joint family is not sufficient, defendants have to prove their families are separated joint status has been disappeared. In absence of such proof as per natural justice existence of the joint family, is to be presumed till proving of its

severance. Therefore the reasons assigned in the judgment are to be considered and there is no reason or documentary evidence to consider the prayer under appeal. The trial court has answered all issues by placing of proper reasons. Therefore the judgment and decree passed by the trial court is well reasoned and not required interference by this court. **Hence I answer points No.1 and 2 in Negative.**

22. **Point No.3:** In view of findings on points No.1 and 2 in **Negative**, the appellants are not entitled for any remedy claimed under the appeal. In the result, I proceed to pass the following:

ORDER

An appeal filed by the appellant/defendant No.1 U/Sec.96 R/w Order XLI Rule 1 of C.P.C. is hereby dismissed.

Consequently, judgment and decree passed in O.S.No.12/2022 by Trial court dated 30.07.2024 is hereby confirmed.

Draw up decree accordingly.

Office is hereby directed to send records to the Trial court forthwith along with copy of this judgment and decree.

*[Dictated to the Stenographer, transcribed and typed by him, the same is corrected, signed and then pronounced by me in the open court on this the **4th day of July - 2026**].*

Sd/-
(Smt.Sujata Sidagouda Patil)
Senior Civil Judge & Prl.JMFC,
Haliyal.
