

KAVN310001352023



**IN THE COURT OF ITINERARY SENIOR CIVIL JUDGE
HUVINAHADAGALI**

Dated this the 6th day of March 2026

PRESENT

MADHUSUDHANA D K. B.A. LL.B.
Itinerary Senior Civil Judge
Huvinahadagali

OS No. 8/2023

- PLAINTIFFS: 1) Smt. M.P.M. Gowramma**
W/o Late M.P.M. Veeresh
Aged 50 Years
R/o Manyaramasalawada Village
Huvinahadagali Taluk.
- 2) Sri. M.P.M. Vijayanandaswamy**
S/o Late M.P.M. Veeresh
Aged 24 Years
R/o Manyaramasalawada Village
Huvinahadagali Taluk.
- 3) Smt. Pooja**
W/o Anandaiah
D/o Late M.P.M. Veeresh
Aged 22 Years
R/o Korlahalli Village
Mundaragi Taluk.
- 4) Kumari Shilpa**
D/o Late M.P.M. Veeresh
Aged 21 Years
R/o Manyaramasalawada Village
Huvinahadagali Taluk.

(By Sri. B. Halesha Advocate)

V/s

DEFENDANTS: Smt. M.P.M. Sarojamma

Since dead by Her LRs

2) Smt. B.M. Geetha

W/o B.M. Kotraiah

D/o Late M.P.M.Chandraiah

Aged 44 Years

R/o Hanakanahalli Village

Huvinahadagali Taluk.

3) Smt. S.M.Shobha

W/o S.M.Virupakshaiah

D/o Late M.P.M.Chandraiah

Aged 40 Years

R/o Shivananda Nagara

Hagaribommanahalli Taluk.

(D2 and D3 By Sri. K.M.G Advocate)

Date of institution of Suit.	:	04.02.2023
Nature of Suit	:	Partition Separate Possession
Date of commencement of evidence	:	30.08.2024
Date on which Judgment was pronounced	:	06.03.2026
Total duration	:	Years Months Days 03 01 02

MADHUSUDHANA D K

Itinerary Senior Civil Judge

Huvinahadagali

JUDGMENT

The Plaintiffs have filed the above Suit for Partition and Separate Possession of 1/3rd Share in respect of the Items No.1 to 3 Agricultural Lands and the Items No.4 to 7 House and Site Properties. The above Properties will be called as the Items No.1 to 7 of the Suit Schedule Properties in future.

2. The Case of the Plaintiffs is that, Late Sri.M.P.M. Chandraiah was the Propositus of their Family. Now Deceased Defendant No.1 Smt.Sarojamma was the Wife of the Propositus and they were having a Son Late Sri. M.P.M. Veeresh and two daughters the Defendants No.2 and 3 of this Suit. The Plaintiffs are Wife and Children of the Deceased M.P.M. Veeresh. The Suit Schedule Properties were owned by the Propositus Sri. M.P.M. Chandraiah and during his lifetime, they were standing in his name. After the death of the Propositus, his Wife the Defendant No.1 Late Smt.Sharadamma had obtained change of Mutation in her name. The Plaintiffs and Late M.P.M. Veeresh have not consented for the change of Khatha of the Suit Schedule Properties in the name of the Defendant No.1. Late M.P.M. Veeresh was addicted to bad habits like drinking Alcohol, Smoking and Gambling. By taking advantage of the bad habits of M.P.M. Veeresh, the Defendant No.1 had obtained illegal change of Mutation of the Properties to her name. The Defendants No.1 to 3 have colluded together and executed Registered Sale Deed of the Items No.1 and 2 in favor of the Defendant No.2 under the Sale Deed dated 04.12.2015. The Defendants No.2 and 3 have obtained change of Mutation of the said Items No.1 and 2 in her name as per M.R.No.H23/2015-16 and

M.R.No. H22/2015-16. The Defendant No.1 had executed a Registered Gift Deed of the Item No.5 in the name of the Defendant No.2 on 01.07.2010 and Plaintiffs have not consented for the same and Plaintiffs have no knowledge of the same. The Item No.6 was sold by the Defendant No.1 in favor of the Defendant No.2 on 26.06.2012 and the Item No.7 was sold by the Defendant No.1 in favor of the Defendant No.3 on 04.12.2015. The above Sale Deeds and Gift Deed are not binding on the Plaintiffs as the Defendants No.1 to 3 have forcibly took the Signatures of the Deceased M.P.M. Veeresh in the Sale Deeds and Gift Deed. M.P.M Veeresh was died on 13.02.2018 and then, the Plaintiffs have asked the Defendants to effect Partition and the Defendants have postponed the same. Therefore, the Plaintiffs have filed the Suit and they have prayed for the Decree.

3. After the Service of Summons, the Defendants No.2 and 3 have filed their common Written Statement.

4. The Defendants No.2 and 3 have admitted the Relationship pleaded by the Plaintiffs as true. They have denied the remaining allegations made in the Plaint as false. They have contended that, the Items No.4 to 7 are not the Joint Family Properties and the Items No.4 and 5 were gifted by the Defendant No.1 in favor of the Defendant No.2 and therefore, the said Properties are not available for Partition. The Items No.6 and 7 are not the Joint Family Properties and they were gifted by the Defendant No.1 in favor of the Defendant No.3 and therefore, they are not available for Partition. The Items No.1 and 2 were purchased by the Defendants No.2 and 3 under Registered Sale Deeds and therefore, they become the Absolute Owners.

The Item No.3 is the only Ancestral Property standing in the name of the Propositus and it is available for Partition. But, there was no Partition between the Propositus M.P.M. Chandraiah and his brothers and therefore, the Suit is bad for non-joinder of brothers of the Propositus. The Plaintiffs have picked up quarrel with M.P.M. Veeresh in the Year 2010 and they have left the House by taking Movable Properties like Hotel Materials, Godrej, Tables, Fridge, Grinder, TV, 1 KG Silver and 50 Grams of Gold from the House. The Plaintiffs have not included the Movable Properties in the Suit and therefore, the Suit is not Maintainable. The Defendant No.1 was suffering from Cancer and the Plaintiffs have never cared for the Defendant No.1 and therefore, the Defendants No.2 and 3 have looked after the welfare of the Defendant No.1 and therefore, the Defendant No.1 has executed a Will in their favor by bequeathing the Properties in their favor. Therefore, the Defendants have prayed for dismissing the Suit.

5. On the basis of the above Pleadings, My Predecessor in the Office has framed the following:

ISSUES

- 1) Whether the Plaintiffs prove that the Suit Properties are Joint Family Properties?**
- 2) Whether the Plaintiffs prove that the Gift Deed dated 01.07.2010, Sale Deeds dated 23.11.2011 and 26.06.2012 and 04.12.2015 respecting are not binding upon Plaintiffs?**

- 3) Whether the Defendants No.2 and 3 prove that the Item No.1 and 2 Suit Properties are sold for valuable consideration amount for joint family necessity in favor of Defendants No.2 and 3 respecting by Defendants No.1?**
- 4) Whether the Defendants No.2 and 3 prove that Item No.3 Suit Property cannot be partitioned without impleading necessary and Properties to the Suit?**
- 5) Whether the Defendants No.2 and 3 prove that the Item No.4 to 7 Suit Properties are not joint family Properties and they are exclusively belong to Defendants No.1?**
- 6) Whether the Defendants No.2 and 3 prove that the Plaintiff have taken the Movable Properties belonging to joint family as per list at para 11G of Written Statement?**
- 7) Whether the Plaintiffs are entitled to the relief prayed in the Plaint?**
- 8) What Order or Decree?**

6. In support of their Case, the Plaintiff No.2 is examined as the PW1 and he has got marked Ex.P1 and Ex.P17. The Ex.P18 to Ex.P20 are marked by the Plaintiffs in the cross-examination of the DW1. The Defendant No.3 is examined as the DW1 and she got marked Ex.D1 to Ex.D45.

7. I have heard the arguments of the Parties and the Counsel for the Plaintiffs has filed Written Arguments.

8. On appreciation of the evidence and legal aspects involved in the above Case, now, My answers to the above Issues are as follows:

ANSWERS

ISSUE NO.1 : Partly in the Affirmative

ISSUE NO.2 : In the Negative

ISSUE NO.3 : In the Affirmative

ISSUE NO.4 : In the Affirmative

ISSUE NO.5 : In the Affirmative

ISSUE NO.6 : In the Affirmative

ISSUE NO.7 : In the Negative

**ISSUE NO.8 : As per the final Order,
for the following:**

REASONS

9. **ISSUES NO.1 TO 7:** To avoid repetition of giving reasoning on the above interlinked Issues, I will discuss them together.

10. I have already narrated the Case of the Plaintiffs and the Defendants at the inception of the above Judgment and therefore, to avoid repetition of same narration, I will not reiterate it here.

11. The Plaintiffs contend that, *all the Items No.1 to 7 of the Suit Schedule Properties are Ancestral and Joint Family Properties acquired by the Propositus Late M.P.M. Chandraiah.* The Plaintiffs have got marked the Ex.P1 to Ex.P4 RTC Extracts in respect of the Items No.1 to 3. During the cross-examination of the DW1, the Plaintiffs have got marked the RTC Extract of the Item No.3 bearing the Sy.No.280C/2 measuring 3A 46C. The Plaintiff No.2 Sri. Vijayananda Swamy

is examined as the PW1. During his cross-examination, the PW1 has admitted the suggestion that, *the Item No.3 bearing Sy.No.280C/2 was Ancestral Property for the Propositus Chandraiah* as true. The PW1 was asked by the Counsel for the Defendants to show the Documents among the Ex.P1 to Ex.P17 which will show the Items No.4 to 7 were purchased by the Propositus Late M.P.M.Chandraiah. But, the PW1 was not able to show the said Documents and he has said that, *since I am an illiterate, I am not able to show the Documents proving Items No.4 to 7 were also purchased by the Propositus.* The Ex.P18 RTC of the Item No.3 is standing Jointly in the names of the Propositus M.P.M. Chandraiah and his brothers. The remaining Documents Ex.P19 and Ex.P20 DCB Extracts are pressed into service by the Plaintiffs to prove the House and Site Properties are also standing in the name of the Propositus and Deceased Defendant No.1. Though, the Ex.P19 is standing in the name of M.P.M. Chandraiah and the Ex.P20 is standing in the name of his Wife the Defendant No.1 Late Sharadamma, the said Ex.P19 and Ex.P20 does not contain the Measurements of the Items No.5 and 6 of the Suit Schedule Properties and the manner of acquisition of them by the Propositus is not pleaded in the Plaint. Since the Relationship of the Plaintiffs with the Defendants and the Item No.3 bearing Sy.No.280C/2 is admitted by the Defendants as the Ancestral Property, the Plaintiffs have proved the Issue No.1 only in respect of their Relationship and the Item No.3. Therefore, ***the Issue No.1 is answered Partly in the Affirmative.***

12. The Plaintiff allegations show that, the Plaintiffs have specifically pleaded about the execution of Sale Deeds and the Gift Deed of the Items No.1, 2 and 5 to 7 by the Defendant No.1 as per the Gift Deed dated 01.07.2010, Sale Deeds dated 26.06.2012 and 04.12.2015. The Plaintiffs have even got marked the said Sale Deeds and Gift Deed in their evidence as per Ex.P5, Ex.P6, Ex.P10, Ex.P12 and Ex.P15. But, coming to the cross-examination of the PW1, he has pleaded ignorance to the suggestions about *the Item No.1 was purchased by the Defendant No.2 and the father of the PW1 Late M.P.M. Veeresh has put his Signature as a Consenting Witness in the Sale Deed by saying I am not aware of.* Therefore, the fact that, the Items No.1, 2 and 5 to 7 were sold and gifted in the Year 2010, 2012 and 2015 itself shows that, the Plaintiffs have not filed the Suit within 3 Years from the date of execution of Sale Deed of the Item No.6 on 23.11.2011. The Hon'ble Apex Court has discussed about the Remedies available for a Party to challenge the Registered Sale Deed in the reported Case of ***Prem Singh Vs Birbal*** reported in ***AIR 2006 SC 3608***. Wherein, it is held that,

There is a presumption that a registered document is validly executed. A registered document, therefore, prima facie would be valid in law. The onus of proof, thus, would be on a person who leads evidence to rebut the presumption. In the instant case, Respondent No.1 has not been able to rebut the said presumption.

If a deed was executed by the plaintiff when he was a minor and it was void, he had two options to file a suit to get the property purportedly conveyed thereunder. He could either file the suit within 12 years of the deed or within 3 years of attaining majority. Here, the plaintiff did not either sue within 12 years of the deed or within 3 years of attaining majority. Therefore, the suit was rightly held to be barred by limitation by the trial court.

Therefore, the Plaintiffs have failed to prove that, the Registered Sale Deeds and Gift Deed are not binding on them. The Plaintiffs are having the knowledge of these Sale and Gift Transactions and they are also aware of the change of Mutation in respect of the said Properties. But, they did not challenge the Sale Deeds, Gift Deed and the Mutation Proceedings. Since the Plaintiffs are only able to prove the Item No.3 as the Ancestral Property, the conduct of the Plaintiffs in not challenging the Sale Deeds, Gift Deed and Mutation Proceedings suggest their knowledge about these Properties are not the Joint Family Properties and therefore, they did not take any Steps against these Transactions. Therefore, ***the Issue No.2 is answered in the Negative.***

13. The Plaintiffs have pleaded that, *in the Sale Deeds of the Defendants No.2 and 3, the Signatures of husband and father of the Plaintiffs by name Late M.P.M.Veeresh were forcibly taken by the Defendants.* On the other hand, the DW1 has contended in her Affidavit filed in-lieu of examination-in-chief at Para No.18

that, *Late M.P.M. Veeresh was suffering from serious Diseases and therefore, in order to meet his Medical Expenses, the Defendant No.1 had intended to sell the Properties to Third Parties and then, the Defendants No.1 and 2 came forward to purchase the said Properties for valuable consideration.* In support of their contentions about providing Medical Treatment to the Defendant No.1 and Late M.P.M. Veeresh, the Defendants have got marked the Medical Documents as per Ex.D1 to Ex.D45. The Ex.D32 to Ex.D37 show that, *from the Year 2012 to the Year 2015, the husband and father of the Plaintiffs Late M.P.M. Veeresh was suffering from serious illness.* The other Document of the Defendants show that, *the Defendant No.1 was suffering from serious illness.* In the cross-examination of the PW1, he has admitted that, *since the Year 2010, the Plaintiffs are not residing with M.P.M Veeresh and therefore, they are not aware of the alleged Medical Expenses spent by the Defendants.* The PW1 has also admitted that, *the Defendant No.1 was died due to Cancer during the pendency of the Suit and he is not aware of the fact that, around ₹ 10 Lakhs were required for the Treatment of the Defendant No.1.* The PW1 has also admitted that, *the Plaintiffs have not spent any Amount towards the Treatment of the Defendant No.1.* Therefore, the production of the Ex.D1 to Ex.D45 by the Defendants and the contentions of the DW1 in Paragraph No.18 of her Affidavit are proved by the Registered Sale Deeds of the Defendants No.1 and 2. Therefore, ***the Issue No.3 is answered in the Affirmative.***

14. It is already discussed by Me on the Issue No.1 that, *the Plaintiffs have failed to prove the Items No.4 to 7 are also Joint Family Properties and the Defendants*

have admitted that, the Item No.3 is the only Ancestral Property. During the cross-examination of the PW1, he has admitted that, ಐಟಂ. ನಂ. 3ರ ಆಸ್ತಿಯಲ್ಲಿ ಇದುವರೆಗೆ ಚಂದ್ರಯ್ಯನ ಅಣ್ಣ-ತಮ್ಮಂದಿರ ನಡುವೆ ಪಾಲು ವಿಭಾಗವಾಗಿಲ್ಲ ಎಂದರೆ ಸರಿ. ಸದರಿ ಆಸ್ತಿಯು ನಿಪಿ3 ಮತ್ತು ನಿಪಿ4ರ ಪ್ರಕಾರ ಈಗಲೂ ಚಂದ್ರಯ್ಯನ ತಂದೆ ಬಸವನಗೌಡನ ಹೆಸರಿನಲ್ಲಿ ಇದೆ ಎಂದರೆ ಸರಿ. ಬಸವನಗೌಡನಿಗೆ 5 ಜನ ಮಕ್ಕಳು. ಅವರ ಹೆಸರುಗಳು ನನಗೆ ಗೊತ್ತಿಲ್ಲ. The Ex.P3, Ex.P4 and Ex.P18 RTC Extracts are Jointly standing in the names of the Propositus Late M.P.M. Chandraiah and his brothers. The Plaintiffs have admitted that, *there was no Partition in respect of the Item No.3 in between the Propositus and his brothers.* The Plaintiffs are not even aware of the number of brothers of the Propositus. Therefore, for the reason of not impleading the remaining Family Members of the Propositus, the Suit for Partition is not Maintainable.

15. During the cross-examination of the PW1, he has deposed that, ನನ್ನ ತಾಯಿ ಮತ್ತು ಉಳಿದ ವಾದಿಗಳು **2010**ನೇ ಇಸವಿಯಿಂದಲೇ ನನ್ನ ತಂದೆಯನ್ನು ಬಿಟ್ಟು ಬೇರೆ ವಾಸ ಮಾಡುತ್ತಿದ್ದೇವೆ ಎಂದರೆ ನನ್ನ ತಂದೆ ಕುಡಿದು ನಮ್ಮನ್ನೆಲ್ಲಾ ಹೊಡೆಯುತ್ತಿದ್ದರಿಂದ **2010** ರಿಂದ ಅವರೇ ಬೇರೆ ವಾಸ ಮಾಡುತ್ತಿದ್ದರು. **2010** ರಲ್ಲಿ ನನ್ನ ತಂದೆಯಿಂದ ದೂರ ಹೋಗುವಾಗ ನಾವು ಟಿವಿ, ಅಲಮಾರ, ಪಾತ್ರೆ ಸಾಮಾನುಗಳು, ಬೆಳ್ಳಿ ಸಾಮಾನುಗಳನ್ನು ತೆಗೆದುಕೊಂಡು ಹೋಗಿದ್ದೆವು ಎಂದರೆ 4 ಸಾಮಾನುಗಳು ಅಂದರೆ ಟಿವಿ, ಗಾಡ್ರೇಜ್, ಹೋಟೆಲ್ ಪಾತ್ರೆ ಸಾಮಾನುಗಳು ಮತ್ತು ಟೇಬಲ್‌ಗಳನ್ನು ಮಾತ್ರ ತೆಗೆದುಕೊಂಡು ಹೋಗಿದ್ದೆವು. ಬಂಗಾರ ಬೆಳ್ಳಿ ಸಾಮಾನುಗಳನ್ನು ನನ್ನ ತಂದೆಯ ಸಹೋದರಿಯರು ತೆಗೆದುಕೊಂಡಿದ್ದಾರೆ. The PW1 has deposed that, *in the Year 2010, the Plaintiffs have left the House of M.P.M. Veeresh by taking with them the Hotel Articles, TV, Godrej and Tables.* The Defendants have contended that, *at the time of leaving the House of M.P.M. Veeresh, the Plaintiffs have taken all the Movable Properties including Gold of 50 Grams and 1 KG Silver Articles.* The PW1 deposes that, *the Plaintiffs have only moved the 4 Items of Movable Properties and the Gold and Silver Articles were taken by*

the Defendants. The House belongs to the Plaintiffs and Late M.P.M. Veeresh. Therefore, it is not possible for the Court to believe the Statement of the PW1 that, *the Sisters of M.P.M. Veeresh who are the Defendants No.1 and 2 who have taken the Gold and Silver Articles.* The PW1 has admitted that, *Plaintiffs have obtained Movable Properties at the time of leaving the House of M.P.M. Veeresh.* But, the Plaintiffs have not included the Movable Properties in the Suit. Therefore, for want of non inclusion of all the Movables of the Family, the Suit is bad for non-joinder of Properties. Therefore, ***the Issue No.4 to Issue No.6 are answered in the Affirmative.***

16. The PW1 has clearly admitted that, *in the Year 2010, the Plaintiffs have left the House of M.P.M.Veeresh.* The Documentary Evidence on Record shows that, *in the Year 2012, M.P.M. Veeresh was affected by serious illness and he was died in the Year 2015.* The Documents of the Defendants also prove that, *the Defendants have provided the Treatment for M.P.M. Veeresh and the Defendant No.1 and the Properties were sold during 2012 to 2015 to meet the Medical Expenses.* The Sale Deeds also contain the Signatures of M.P.M. Veeresh as a Consenting Party. The Plaintiffs have not taken any action against the Sale Deeds, Gift Deed and Mutation Proceedings from 2011 to 2015 in spite of the fact that, they were aware of the said Transactions. The Plaintiffs have filed the Suit in the Year 2018 (before the Civil Judge and JMFC Court till the same was transferred to this Court on the point of Jurisdiction) without challenging the Sale Deeds, Gift Deed and Mutation Proceedings. Therefore, by way of their conduct, the Plaintiffs have betrayed their knowledge that, *all the Properties are not the Joint Family Properties and therefore, they did not*

take any Legal Action on the said Transactions. The Item No.3 alone is proved to be Ancestral and Joint Family Property for the Plaintiffs and Defendants. But, the admissions of the PW1 in his cross-examination clearly proves that, *there was no Partition effected between the Propositus Late M.P.M. Chandriah and his brothers.* The Plaintiffs have also not included the Movable Properties in the Suit and they have not made the brothers of M.P.M.Chandraiah as Parties in the Suit. Therefore, the Suit for Partition and Separate Possession is bad for non-joinder of Necessary Parties and Properties. For these reasons, the Plaintiffs are not entitled for any relief and therefore, ***the Issue No.7 is answered in the Negative.***

17. **ISSUE NO.8:** For the above discussion, I proceed to pass the following:

ORDER

***The Suit of the Plaintiffs
is hereby dismissed with
Costs.***

Draw Decree Accordingly.

MADHUSUDHANA D K
Itinerary Senior Civil Judge
Huvinahadagali

ANNEXURES**List of witnesses examined for the Plaintiff**

PW1:Sri. M.P.M.Vijayanandaswamy

List of exhibits marked for the Plaintiff

Ex.P1 to

Ex.P4:RTC Extracts

Ex.P5 &

Ex.P6:Certified Copy of Sale Deeds

Ex.P7 &

Ex.P8:Mutation Registers

Ex.P9:DCB Extract

Ex.P10:Certified Copy of Gift Deed dated 01.07.2010

Ex.P11:DCB Extract

Ex.P12:Certified Copy of Sale Deed dated 26.06.2012

Ex.P13:DCB Extract

Ex.P14:Mutation Register

Ex.P15:Certified Copy of Sale Deed dated 23.12.2011

Ex.P16:DCB Extract

Ex.P17:Mutation Register

Ex.P18:RTC Extract of Sy.No.280/C/2

Ex.P19 &

Ex.P20:DCB Extracts

List of witnesses examined for the Defendants

Ex.D1:Smt. S.M. Shobha

List of exhibits marked for the Defendants

Ex.D1 to

Ex.D45: Medical Documents

Sd/-

MADHUSUDHANA D K

Itinerary Senior Civil Judge

Huvinahadagali