

KADG420010382019



**IN THE COURT OF THE CIVIL JUDGE & JMFC., AT  
HARAPNAHALLI.**

**Present : Shri. Manu Sharma S.P.,  
B.A.LAW.LL.M.  
Civil Judge & JMFC,  
Harapanahalli.**

**Dated on this the 30<sup>th</sup> Day of April - 2026.**

**ORIGINAL SUIT NO.141/2019**

**PLAINTIFF/S:**

M.Siddalingamma, D/o. Late  
N.M.Gurunathappa W/o. Goneppa,  
Aged about 40 years, Teacher, P/R/o  
Chigateri village, Harapanahalli Taluku,  
Ballari District, Now at Shanthi Godu  
(Post), Puttur Taluku, Dakshina  
Kannada District.

**(By Sri.V.G.P., Adv.,)**

**V/s.**

**DEFENDANT/S:**

1. N.M.Rajakumar, S/o. Late.  
N.M.Gurunathappa, Aged about 46  
years, Agriculturist, R/o Chigateri village,  
Harapanahalli Taluku, Ballari District.

2. Amaravathi Kamma @ Parvathi,  
W/o. Amaravathi Vasanthappa, and D/o  
Late N.M.Gurunathappa, Aged about 43  
years, R/o 1<sup>st</sup> ward, Near Saraswathi  
School, Dodda Bhatthi (Post) Davanagere  
Taluku and District.

3. N.M.Channabasappa, S/o. Late Mathihalli Kalappa, Aged about 65 years, Agriculturist.

4. Smt.N.M.Kamma, W/o.Late N.M.Halappa, Aged about 55 years, Agriculturist.

5. N.M.Shridharappa,  
S/o. Late N.M.Kalappa, Dead by LR's.

(a). Smt.Akkamma, W/o. N.M.Shridharappa, Aged about 60 years, House wife.

(b). M.Basavanagoud, S/o. Late N.M.Shridharappa, Aged about 40 years, Agriculture.

(c). M.Shivakumar, S/o. Late N.M.Shridharappa, Aged about 38 years, Agriculture, Defendant No.5(a) to 5(c) all are R/o Chigateri village, Harapanahalli Taluku, Vijayanagara District.

6. N.M.Gurusiddappa, S/o. Late. N.M.Kalappa, Aged about 60 years, Agriculturist, Defendant No.3 to 6 all are agriculturist, R/o Chigateri village, Harapanahalli Taluku, Ballari District.

7. U.M.Mallikarjuna S/o Shivalingamurthy, Aged about 39 years, Agriculturist, R/o Chigateri village, Harapanahalli Taluku, Ballari District.

**(Defendant No.1 By Sri. M.A.N. Adv.)**

**(Defendant No.2 By Sri. K.N.R. Adv.)**

**(Defendant No.3 & 6 By Sri. S.B. Adv.)**

**(Defendant No.7 By Sri. C.H.P. Adv.)**

**(Defendant No.4, and 5 (a) to 5(c) are Placed exparte.)**

1.	Date of institution of the suit	16.10.2019
2.	Nature of the suit	Partition
3.	Date of commencement of evidence	11.11.2024.
4.	Date of judgment	30-04-2026
5.	Total Duration	Year/s    Month/s    Day/s 06            06            14

**Civil Judge & JMFC,  
Harapanahalli.**

### **JUDGMENT**

1. Plaintiff has filed suit for partition and separate possession, claiming a 1/3<sup>rd</sup> share in the suit schedule properties. The plaintiff has also sought to declare that any document or supporting document executed by defendant No.1, or by any other person, is not binding on the rights of the plaintiff.

**2. Brief facts of the case of the Plaintiff are as hereunder:-**

One N.M. Kalappa, who is the grandfather of the plaintiff and the defendants, had five sons, namely, N.M. Gurunathappa, N.M. Shridharappa, N.M. Guru Siddappa, N.M. Channabasappa and N.M. Halappa. The plaintiff and defendant No.1 and 2 are the children of

late N.M. Gurunathappa and late Sushilamma. The father of the plaintiff died on 22-06-2013, and the mother of the plaintiff died on 23-01-2018 at Yetheri village. Earlier, the suit schedule properties were standing in the name of N.M. Gurunathappa. Defendant No.1 is the elder male member of the family. After the death of N.M. Gurunathappa, defendant No.1 colluded with revenue officials and got his name mutated in the records of the properties behind the back of the plaintiff and defendant No.2, claiming to be the sole member of the family. The said act of defendant No.1 is illegal, and he is not having any independent right over the suit schedule properties. After the death of N.M. Gurunathappa, defendant No.1 is the Karta of the family of the plaintiff and defendant No.2. Prior to securing a government job, the plaintiff and defendant No.1 and 2 were residing in a joint family. After securing the job, she visited her maternal family from time to time. The plaintiff also joined her hands for the benefit of the joint family. The suit schedule properties are the joint family properties of the plaintiff and defendant No.1 and 2. The suit schedule properties are undivided Hindu joint family properties. There is no partition between the family members in respect of the suit schedule

properties, and they are having equal rights over the suit schedule properties.

**2(a).** The suit schedule properties are the joint family properties of the plaintiff and defendant No.1 and 2. The suit schedule properties are undivided Hindu joint family properties. There is no partition between the family members in respect of the suit schedule properties, and they are having equal rights over the suit schedule properties. Defendant No.1 has got no independent right over the suit schedule properties, and he has not given a proper account of the suit schedule properties to the plaintiff. Defendant No.3, 5, and 6, late Gurunathappa, and late Halappa are own brothers, being the sons of late N.M. Kalappa. Defendant No.4 is the wife of late N.M. Halappa. Defendant No.3 to 6 are made as parties to the suit as necessary parties, as they are joint owners of the land bearing Sy.No.443/2 measuring 11.68 acres. In this land, the father of the plaintiff and defendant numbers 1 and 2 was having a  $1/5^{\text{th}}$  share, which is to the extent of 2.33 acres. Recently, the plaintiff came to know that defendant No.1, by taking advantage of his individual name in the ROR (Record of Rights), created sale deeds in favor of third parties to deprive the legitimate share of the plaintiff in the suit schedule

properties. The plaintiff has also learnt that defendant No.1 has succeeded in attempting the illegal act pertaining to municipality proceedings. Plaintiff demanded her share in the schedule properties with the defendants, but the same was refused. Hence, the suit.

3. After service of summons, Defendant No.1, to 3, 6 and 7 have appeared through their respective counsels and Defendant No.1 and 2 have filed separate written statements. During the pendency of the case, defendant No.5 died and his Lrs are brought on record. However after service of suit summons they remained absent and placed *exparte*.

4. Defendant No.1 has filed a written statement denying the case of the plaintiff and contending *inter alia* as hereunder:-

The suit schedule properties, and also some of the properties standing in the name of the plaintiff and her husband, are joint family properties; but the plaintiff has an intention to suppress and leave out those properties to deprive the defendants of their share. The joint family includes the late grandfather, N.M. Kalappa, and his five sons, namely: Gurunathappa, N.M. Shridharappa, N.M. Guru Siddappa, N.M. Channabasappa, and N.M. Halappa. Among them N.M.

Gurunathappa expired in the joint family, hence all members of the joint family are having equal rights over the joint family properties. The plaintiff is a government servant, and the family has invested a huge amount of money to secure the government job for the plaintiff. The present suit has been filed by the plaintiff on the evil advice of others. Based on the said contentions, defendant No.1 prayed for the dismissal of the suit.

**4(a).** Defendant No.2 has filed a written statement submitting that the suit schedule properties are the joint family properties of the plaintiff and defendant No.1 and 2. The suit properties are ancestral joint family properties, and defendant No.2 is also having a share in the suit schedule properties. The entries in the ROR are not binding on the rights of defendant No.2. The sale deed executed by defendant No.1 in favor of defendant No.7 is not binding on the share of defendant No.2, and also any other documents are not binding on the rights of defendant No.2. Defendant No.2 also claims a 1/3<sup>rd</sup> share in the suit schedule properties as per law. Based on the said contentions the Defendants have prayed for dismissal of the suit.

**5.** Based on pleadings the following issues were framed by the court:-

## ISSUES

1. Whether the plaintiff proves that herself and Defendants constitute Hindu undivided joint family, the suit schedule mentioned properties are their joint family properties ?.

2. Whether the Plaintiff is entitled for partition? If so to what extent ?.

3. Whether the Defendant No.1 proves that suit is hit by non joinder of necessary and proper parties ?.

4. Whether the Plaintiff is entitled for relief as sought for ?.

5. What order or decree?.

6. In order to prove the case, Plaintiff is examined as PW1. The following documents are marked on behalf of Plaintiff.

Ex.P-1 : Certified copy of registered sale deed

Ex.P.2 : Mutation register ( M.R. No.17)

Ex.P.3 : Computerized RTC

Ex.P-4 to 10: Computerized RTCs

Ex.P.11 : Certified copy of genealogy tree

Ex.P.11(a) : Affidavit accompanying the genealogy tree.

7. In support of defense, Defendant No.1 got examined as DW-1 and in support his case two witnesses are examined as DW-2 and DW-3. No documents are marked on behalf of the Defendants.

8. Heard arguments and perused records.

9. Upon consideration of evidence on record my findings to the above issues are as here under:-

Issue No.1	:	In the <b>Partly Affirmative.</b>
Issue No.2	:	In the <b>Partly Affirmative.</b>
Issue No.3	:	In the <b>Negative.</b>
Issue No.4	:	In the <b>Partly Affirmative.</b>
Issue No.5	:	<b>As per the final order for the following:-</b>

### REASONS

**10. Issue No.1:-** It is the contention of the plaintiff that herself and defendants constitute Hindu undivided joint family and suit schedule properties are joint family properties of herself and defendants. In order to prove the case, PW1 and reiterated plaintiff averments in evidence. Apart from leading oral evidence, plaintiff has produced Ex.P4 to Ex.P10 RORs of Item No.1 to 7 of the suit schedule. It is to be noted that Ex.P4 to Ex.P9, RORs of Item No.1 to 6 are standing in the name of defendant no.1 alone and Ex.P10, ROR

of Item No.7 is jointly standing in the name of defendant no.1, defendant no.3, defendant no.4. defendant no.5 and defendant no.6.

11. Here it is to be noted that defendant no.1 in his written statement has not denied the relationship between plaintiff and defendants, and there is no denial with regard to the fact that suit schedule properties are ancestral properties. But only contention of the defendant no.1 is plaintiff has not added all the properties. So here It is clear from the written statement of defendant no.1 that he is not disputing either relationship with plaintiff or ancestral and joint family nature of the suit schedule properties. However, defendant no.2 has filed admitting the claim of the plaintiff and other defendants have not chosen to file written statement. Further, as could be seen from the cross examination of PW1, defendant No.1 has suggested that there is no partition between one Gurunathappa who is father of Plaintiff and Defendant No.1 and brothers of Grunathappa. But, here as already mentioned RORs of Item No.1 to 6 marked as Ex.P.4 to 9 are standing in the individual name of Defendant No.1. But, brothers of Gurunathappa being on record have not denied the case of the Plaintiff. If at all there was no partition between Plaintiff's father and them, they certainly would have disputed the entry of individual name

of Defendant No.1 found in Ex.P.4 to Ex.P.9 who belong to the branch of Grunathappa or they should have offered the reason as to why and under what circumstances records of Item No.1 to 6 came to be entered in the individual name of Defendant No.1. It is also relevant to note that ROR of item No.7 is standing in the joint names of Defendant No.1,3,,4,5 and 6. Plaintiff has claimed partition only to the extent of 2.33 cents out of 11.68 cents contending that said 2.33 cents fell into the share of her father, but ROR continued in joint names.

**12.** In this regard it is relevant to refer to the cross examination of DW1 wherein he has admitted that father of plaintiff and his brothers have got equal rights in Item No. 7 of the suit schedule. Further, DW1 has also admitted that Item No.1 to 6 of the suit schedule have fallen to the share of his father. The relevant portion of cross-examination is extracted here below:-

" ದಾವಾ ಶೆಡ್ಯೂಲ್ ಐಟಮ್ ನಂಬರ್ 7 ರಲ್ಲಿ ನನ್ನ ತಂದೆಗೆ ಹಾಗೂ ಅವರ ಸಹೋದರರಿಗೆ ಸಮ ಪಾಲು ಇದೆ ಎಂದರೆ ಸರಿ ಐಟಂ ನಂಬರ್ 7 ರಲ್ಲಿ ನನ್ನ ತಂದೆಗೆ ನನ್ನ ತಂದೆ ಹಿನ್ನೆಗೆ ಬಂದ ಆಸ್ತಿಯಲ್ಲಿ ನನಗೆ ಮತ್ತು ನನ್ನ ಸಹೋದರಿಯರಿಗೆ ಸಮಪಾಲು ಇದೆ ಎಂದರೆ ಸರಿ ದಾವಾ ಶೆಡ್ಯೂಲ್ ಐಟಂ ನಂಬರ್ 1 ರಿಂದ 6 ಇವು ನನ್ನ ತಂದೆಯ

ಹೆಸರಿನಲ್ಲಿ ಇರುವುದು ಅಂದರೆ ಸರಿ. 1 ರಿಂದ 6 ದಾವಾಸ್ತಿಗಳು ನನ್ನ ತಂದೆಯ ಪಾಲಿಗೆ ಬಂದ ಆಸ್ತಿಗಳು ಅಂದರೆ ಸರಿ".

It is clear from the said admission that item No.1 to 6 have fallen to the share of father of Plaintiff, and his father is also having share in item No.7. Further, it is to be noted that DW2 in his cross-examination has admitted that suit schedule properties are not individual properties of defendant no.1. Here Defendant No.3 to 6 have not claimed any share in suit schedule properties by contesting the suit. So here ROR entries in the individual name of Defendant No.1, coupled with admission of DW1 in cross examination and silence of Defendant No.3 to 6 without contesting suit establish the fact that father of Plaintiff was separated from Defendant No.3 to 6 who are his siblings by taking his share in the partition. In this regard it is profitable to refer to the decision of Honorable Supreme Court of India reported in AIR 1997 SC 2719 between Balwanth Singh and Another V. Daulath Singh by his legal heirs and others wherein it was held that oral partition can be proved by subsequent revenue entries. The said decision is aptly applicable to the case on hand as ROR is mutated in the individual name of Defendant No.1. Here, defendant no.1 has not shown his independent right over the suit schedule properties so as to reflect his

individual name in the RORs. And on the other hand, he has clearly admitted that said properties are also family properties. So it is clear that his name is entered as a representative of branch of Gurunathappa. But in the cross examination of PW1 he made suggestions that there was no partition between his father and brothers of his father. But Defendant No.1 has not explained as to why his individual name is entered in the ROR if his father was not separated from the family. Moreover, as brothers of father of Plaintiff and Defendant No.1 are silent being on record without contesting the suit, the Defendant No.1 has no locus standi to contend that there was no partition between his father and brothers of his father especially when he himself has admitted in the cross examination that suit schedule properties have come to the share of his father in the partition. Thus, it is clear from the evidence on record that Item No.1 to 7 of the suit schedule are ancestral and joint family properties of Plaintiff and Defendants.

**13.** In so far as Item No.8 is concerned, plaintiff has not produced any documents to show that said property is ancestral and joint family property of plaintiff and defendants. Advocate for plaintiff contended that DW1 has admitted in the cross-examination that said

property is also family property. But it is to be noted that Oral admission is not suffice to hold that Item No.8 is ancestral and joint family property when no documents are produced to show that said property was earlier standing in the name of ancestors of plaintiff and defendants and now it is standing in the name of any of the parties to the suit. So it is not possible to hold that Item No.8 is joint family property of the plaintiff and concerned defendants.

**14.** So far as Item No.9 is concerned, it is to be noted that it is part and parcel of Item No.4 and carved out of Item No.4. As could be seen from Ex.P1, portion of Item No.4 i.e. Item No.9 has been sold out under registered sale deed in favour of defendant no.7. Here, it is relevant to note that no where in his written statement Defendant No.1 has pleaded that he had any independent or exclusive right over the said item and on the other hand as already mentioned in his written statement he has not denied the ancestral nature of the suit schedule properties. Furthermore, it is also important to note that defendant no.7 who is purchaser, being on record, has not chosen to contest the suit. As such, no materials are placed before the court to show his bonafideness in purchasing the portion of Item No.4 suit schedule property i.e. Item No. 9. Specific case of the plaintiff is that even Item

No.4 is his joint family property and as defendant no.7 being on record has not contested the suit of the plaintiff there is no reason to disbelieve the version of the plaintiff. Defendant no.7 being on record ought to have shown before the court that he purchased it from defendant no.1 to meet the family necessity of their family and he should have even otherwise shown his bona fideness in purchasing the property. In the absence of materials showing bonafideness of defendant no.7 in purchasing Item No.9, which is part of Item No.4, there is no legal impediment to hold that even Item No.4 is ancestral and joint family property of family of plaintiff. No materials are placed before the court to show that Item No.1 is independent property and not carved out of Item No.4. Thus, it is clear from evidence on record that plaintiff has proved that Item No.1 to 7 are the ancestral and joint family properties. Hence, I answer **Issue No.1 in the Partly Affirmative.**

**15. Issue No.3:-** Defendant no.1 has contended that suit is bad for non-joinder of necessary parties. But he has not stated as to how suit is bad for non-joinder of necessary parties and he has not even given particulars of the persons who ought to have included in the suit as necessary parties. Further Defendant No.1 has contended that

Plaintiff has not joined all family properties in the present suit. But Defendant No.1 has not pleaded the particulars of the said properties and hence mere assertion without material particulars will not be suffice to hold that Plaintiff has not included all the family properties in the suit. Under such circumstances, it is not possible to hold that suit is not bad for non-joinder of necessary parties. So mere pleadings in the written statement that suit is bad for non-joinder of necessary parties, without narrating material details, will not be suffice to hold suit as bad for non-joinder of necessary parties. Hence, I answer **Issue No.3 in the Negative.**

**16. Issue No.2 and 4.** As these two issues are inter related they are taken up together for common discussion to avoid repetition. Plaintiff has claimed 1/3 share in the suit schedule properties. As already discussed, it is clear from the evidence on record that Item No. 1 to 7 are the ancestral and joint family properties of Plaintiff and Defendant No.1 to 6. It is also clear from evidence that Defendant No.3 to 6 who are brothers of Gurunathappa who is father of Plaintiff being on record have not contested the suit. Furthermore, as already discussed item No.1 to 7 have come to the share of father of Plaintiff. As already mentioned Plaintiff has restricted her claim only to the

extent of her father's share in Item No.7 and remaining properties would remain intact in the said survey number for enjoyment of brothers of Gurunathappa. So here, Item No.1 to 7 are to be divided only between plaintiff and defendant no.1 and 2, who belong to the branch of Gurunathappa. Therefore, having regard to the relationship of plaintiff and defendant no.2 with Gurunanthappa, it is to be held that plaintiff and defendant no.1 and 2 are entitled to 1/3 share each in Item No.1 to 7 of the suit schedule. It is also clear from evidence on record that no materials are placed to indicate that Item No.8 is family property or property of plaintiff and defendant No.1 to 6. It is also clear from evidence on record that Item No.9 is carved out of Item No.4. As such, granting separate partition in respect of Item No.9 does not arise for consideration at all as shares are already allotted in item No.4 which is inclusive of Item No.9. Plaintiff has also sought to declare that any document executed by Defendant No.1 or any other person are not binding on the Plaintiff. It is to be noted that Plaintiff has not specified the particulars and material details of the documents which are being assailed by him. So in the absence of specific prayer, blankly no documents can be declared as not binding on Plaintiff. As already discussed, it is clear that having no regard to the sale deed

standing in the name of Defendant No.7, Plaintiff is having share in the same. So here, plaintiff has proved that she is entitled to one third share in Item No. 1 to 7 and no entitled to share in item No.8 and 9 of the suit schedule. Hence, I answer **Issue No.2 and 4 in the Partly Affirmative.**

**17. Issue No.5:-** For the reasons stated above, I am of the considered opinion that suit filed by the plaintiff is to be partly decreed with costs. In the result, the following.

### **ORDER**

Suit filed by the Plaintiff is hereby partly decreed with cost.

Plaintiff is entitled to 1/3<sup>rd</sup> share in item No.1 to 7 of suit schedule property.

Defendant No.1, is held entitled to 1/3<sup>rd</sup> share in item No.1 to 7 of suit schedule property .

Defendant No.2 is held entitled to 1/3<sup>rd</sup> share in item No.1 to 7 of suit schedule property .

Claim to the plaintiff for partition and separate possession in respect of item No.8 and 9 is hereby rejected.

Draw preliminary decree accordingly.

Office is directed to register final decree petition based on this preliminary decree sumoto as per the decision of Hon'ble Supreme Court of India reported in 2009 (3) SCC 689 between Shub Karan Bubna @ Shub Karan Prasad Bub Vs Sita Saran Bubn and others and as per circular issued by Hon'ble High Court of Karnataka bearing R.J.No.3/2024 dated 03.01.2024 and put up FDP file along with case records of this case with separate order sheet of FDP on 25.07.2026.

(Dictated to stenographer and transcript by him and same is corrected and initialed by me and then pronounced in the open court on this **30<sup>th</sup> day of April-2026.**)

**(Shri. Manu Sharma S.P.)  
Civil Judge & JMFC,  
Harapanahalli.**

**:: ANNEXURE ::**

**List of witnesses examined on behalf of plaintiff/s:**

PW-1 : Kamalamma

**List of exhibits marked on behalf of plaintiff/s:**

Ex.P-1 : Certified copy of registered sale deed

Ex.P.2 : Mutation register ( M.R. No.17)

Ex.P.3 : Computerized RTC

Ex.P-4 to 10: Computerized RTCs

Ex.P.11 : Certified copy of genealogy tree

Ex.P.11(a) : Affidavit accompanying the genealogy tree.

**List of witnesses examined on behalf of defendant/s:**

DW-1 : N.M.Rajakumar  
DW-2 : B.Ramesh  
DW-3 : Shankaralingayya.R.M.

**List of exhibits marked on behalf of defendant/s:**

- NIL -

**(Shri.Manu Sharma S.P.)  
Civil Judge & JMFC,  
Harapanahalli.**

**(Vide separate order)  
Order pronounced in the Open Court  
vide Dt.30.04.2026.**

**: ORDER :**

Suit filed by the Plaintiff is hereby partly decreed with cost.

Plaintiff is entitled to 1/3<sup>rd</sup> share in item No.1 to 7 of suit schedule property.

Defendant No.1, is held entitled to 1/3<sup>rd</sup> share in item No.1 to 7 of suit schedule property.

Defendant No.2 is held entitled to 1/3<sup>rd</sup> share in item No.1 to 7 of suit schedule property.

Claim to the plaintiff for partition and separate possession in respect of item No.8 and 9 is hereby rejected.

Draw preliminary decree accordingly.

Office is directed to register final decree petition based on this preliminary decree

sumoto as per the decision of Hon'ble Supreme Court of India reported in 2009 (3) SCC 689 between Shub Karan Bubna @ Shub Karan Prasad Bub Vs Sita Saran Bubn and others and as per circular issued by Hon'ble High Court of Karnataka bearing R.J.No.3/2024 dated 03.01.2024 and put up FDP file along with case records of this case with separate order sheet of FDP on 25.07.2026.

**Civil Judge and J.M.F.C.,  
Harapanahalli.**