

**IN THE COURT OF THE ADDITIONAL CIVIL JUDGE AND
JMFC BASAVANA BAGEWADI**

PRESENT

SRI SHIVARAJU H.S.,
B.A.L., LL.B.
ADDL. CIVIL JUDGE & JMFC,
BASAVANA BAGEWADI

Dated this the 23rd day of February-2019

O.S.No.250/2011

BETWEEN:

1. **Shivappa**
S/o. Mallappa Kalyani,
Aged: 56 yrs. Occ: Agrl.,
R/o. Ukkali village,
Tq: B.Bagewadi.
2. **Umabai**
W/o. Sharanappa Kalyani,
Aged: 48 yrs. Occ: Agrl.,
R/o. Ukkali village,
Tq: B.Bagewadi.
3. **Mallappa**
S/o. Sharnappa Kalyani,
Aged: 22 yrs. Occ: Agrl.,
R/o. Ukkali village,
Tq: B.Bagewadi.
4. **Sangappa**
S/o. Sharnappa Kalyani,
Aged: 20 yrs. Occ: Agrl.,
R/o. Ukkali village,
Tq: B.Bagewadi.
5. **Anil**
S/o. Sharnappa Kalyani,
Aged: 19 yrs. Occ: Agrl.,
R/o. Ukkali village,
Tq: B.Bagewadi.

6. Chandawwa

W/o. Gireppa Kalyani,
Aged: 70 yrs. Occ: Agrl.,
R/o. Ukkali village,
Tq: B.Bagewadi.

7. Basawwa

W/o. Dareppa Bali,
Aged: 50 yrs. Occ: H.H.Work,
R/o. Atharga,
Tq: Indi.

8. Shantawwa

W/o. Basavant Hachadad,
Aged: 48 yrs. Occ: H.H.Work,
R/o. Ukkali village,
Tq: B.Bagewadi.

9. Borawwa

W/o. Bhimappa Satihal,
Aged: 45 yrs. Occ: H.H.Work,
R/o. Ukkali village,
Tq: B.Bagewadi.

10. Parawwa

W/o. Sangappa Kalyani,
Aged: 60 yrs. Occ: H.H.Work,
R/o. Ukkali village,
Tq: B.Bagewadi.

11. Malakappa

S/o. Sangappa Kalyani,
Aged: 40 yrs. Occ: Agrl.,
R/o. Ukkali village,
Tq: B.Bagewadi.

12. Gurasidappa

S/o. Sangappa Kalyani,
Aged: 38 yrs. Occ: Agrl.,
R/o. Ukkali village,
Tq: B.Bagewadi.

13. Laxmibai

W/o. Rudragouda Sappennevar,
Aged: 36 yrs. Occ: H.H.Work,
R/o. Ukkali village,
Tq: B.Bagewadi.

.....Plaintiffs.**AND****1. Sahebagouda**

S/o. Ninganaagouda Wadedavar,
Aged: 65 yrs. Occ: Agrl.,
R/o. Mulasavalagi,
Tq: Sindagi.
Dist:Vijayapura.

2. Basanagouda

S/o. Ninganaagouda Wadedavar,
Aged:63 yrs. Occ: Agrl.,
R/o. Mulasavalagi,
Tq: Sindagi.
Dist:Vijayapura.

3. Golanagouda

S/o. Ninganaagouda Wadedavar,
Aged: 61 yrs. Occ: Agrl.,
R/o. Mulasavalagi,
Tq: Sindagi.
Dist:Vijayapura.

4. Kasturibai

W/o. Sharanagouda Wadedavar,
Aged: 36 yrs. Occ: H.H.Work,
R/o. Mulasavalagi,
Tq: Sindagi.
Dist:Vijayapura.

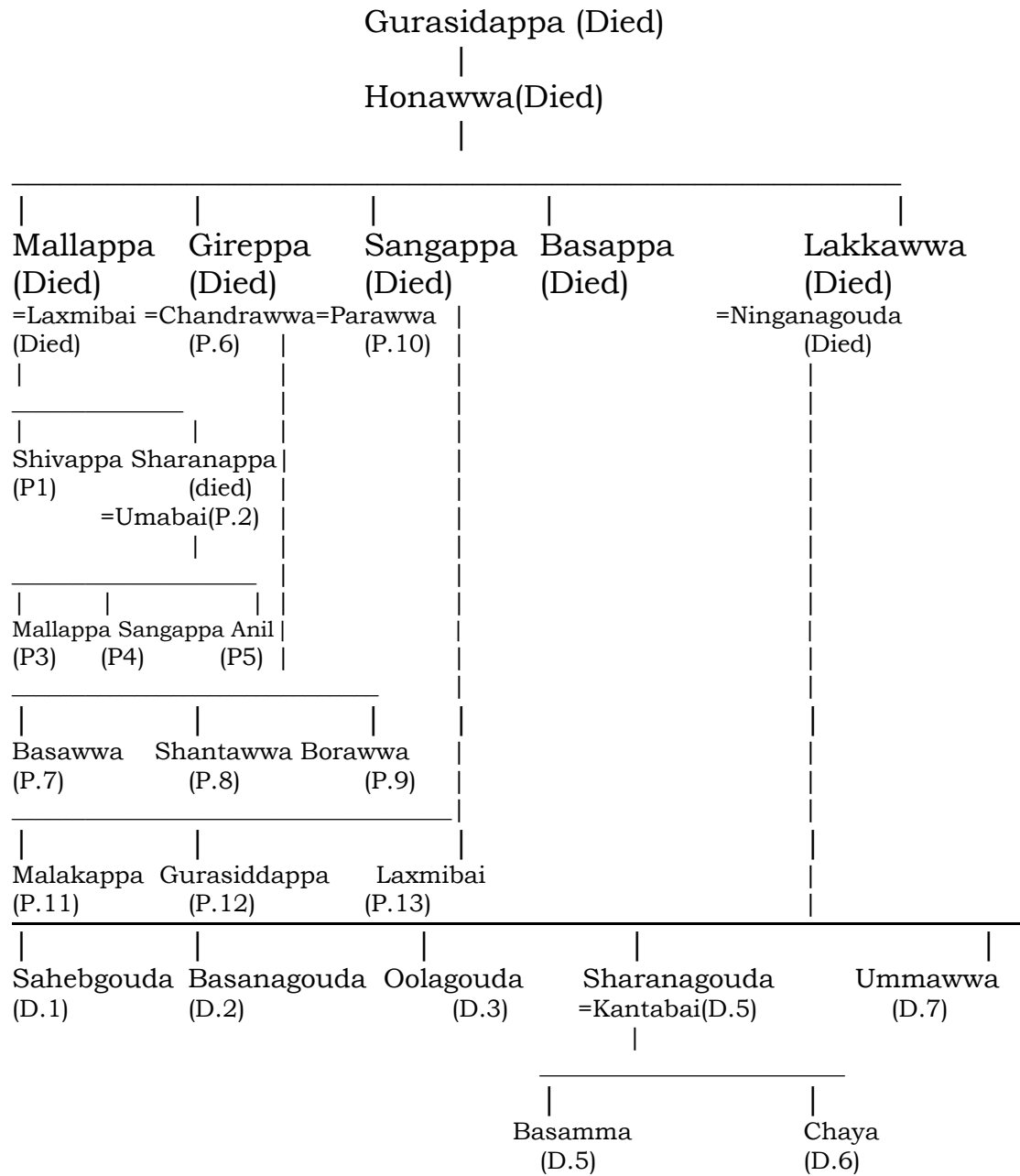
5. Basamma

D/o. Sharanagouda Wadedavar,
Aged: 20 yrs. Occ: H.H.Work,
R/o. Mulasavalagi,
Tq: Sindagi.
Dist:Vijayapura.

the suit schedule property and consequential relief of Permanent Injunction restraining the Defendants, his agents or any other persons claiming under them from interfering with the Plaintiffs' peaceful possession over the suit schedule property and decree for Partition and Separate Possession of 3/4th share of the Plaintiffs in the suit schedule property, in the event Defendants prove their shares over the same.

2. Brief facts of the case are as under:

It is specific case of the Plaintiffs that, they are joint owners of suit property land bearing Sy.No.71/4 measuring 5 acres 38 guntas situated at Ukkali village of Basavan Bagewadi Taluk. The suit schedule property had fallen to Basappa S/o. Gurasiddappa Kalyani in family partition amongst his brothers. The said Basappa S/o. Gurasiddappa Kalyani died on 28-11-1993 at Ukkali village of Basavan Bagewadi Taluk, Bijapur District leaving behind the Plaintiffs and his successors. The genealogy of Plaintiffs and Defendants are referred in below:



3. The main propositus of the family namely Gurasiddappa and his wife Honnawwa had five sons i.e. Mallappa, Gireppa, Sangappa, Basappa Lakkavva. The first son deceased Mallappa and his wife Lakshmibayi died leaving behind the Plaintiff No.1. Their second son namely Sharnappa also died leaving behind his wife and children i.e. Plaapintiff No.2 to 5. The second son of

main propositus namely Gireppa had two sons and a daughter. The wife and children of Gireppa are Plaintiff No.6 to 10. At present the said Gireppa is suffering from ill-health and is not able to move from one place to another, even he is not having conscious and slept as dead person. The Plaintiff No.11 to 13 are successors of 3rd son Sangappa. The 4th son Basappa died on 28-11-1993 at Ukkali village. The said Basappa had no wife and children. The Defendants are successors of Lakkavva, who died on 19-07-2004 at Mulasavalagi village, Sindagi Taluk, Vijayapura District. The suit schedule property was absolutely in possession of deceased Basappa Kalyani, who is 4th son of main propositus till his death. After the death of Basappa all the Plaintiffs have come into common possession of the suit land as they are only legal heirs of deceased Basappa Kalyani. The Plaintiffs are only absolute owners of the suit land and having title over the same. The Plaintiff had also filed application along with the death certificate of the Basappa to enter their name in the records of suit land. On the other hand, Lakkavva who is daughter of main propositus also filed application before the Village Accountant of Ukkali village, Basavan Bagewadi Taluk and succeeded to get enter her name in the records. The said Lakkavva is not at all heir of deceased Basappa. Further it is

also case of the Plaintiff that, Defendant No.2 to 6 filed application before the Tahashildar, Basavan Bagewadi to get register their name in the records of rights of suit schedule property. But, the Revenue Authority rejected their application as per M.R.No.53/2004-05, against which Defendant No.2 to 6 have filed appeal before the Assistant Commissioner, Bijapur challenging the order passed by the Tahashildar, Basavan Bagewadi under RTS/EP-63/2009-10. The said appeal filed by the Defendant No.2 to 6 is came to be allowed without issuing notice to the Plaintiffs. The Plaintiffs absolutely not known about order passed by the Appellate Authority in RTS/EP-62/2009-10. The Defendants having no title or interest over the suit land being the heirs of deceased Lakkavva. The marriage of deceased Lakkavva was solemnized with deceased Ninganagouda at about 65 years back she had lost her right as per law succession. The Defendants being heirs of Lakkavva have no right over the suit land. In case the Defendants prove their legal right over the schedule property as they being heirs of deceased Lakkavva, then it be decide their share. Hence, Plaintiffs are entitled to the relief of Declaration. The Plaintiffs are cultivating the suit land and they are owners and possessors of the same, but Defendants causing obstruction to the Plaintiff in peaceful possession and

enjoyment of the suit land. The Defendants have no right, title and interest over the suit land, they unnecessarily picking up quarrel with the Plaintiffs and also threatening with dire consequences. Hence, in the month of May 3rd week-2011 cause of action arose for the Plaintiffs to file present suit. Therefore, Plaintiffs have constrained to file present suit seeking relief of Declaration to declare that they are absolute owners of suit land and consequential relief of Permanent Injunction restraining the Defendants from causing obstruction to the Plaintiffs' peaceful possession over the suit property and decree for Partition and Separate Possession of 3/4th share of the Plaintiffs, if Defendants prove their share over the sit land.

4. After service of summons, the Defendant No.2, 4 and 6 have appeared through their counsel. Defendant No.2 filed written statement. The Defendant No.4 and 6 have failed to file written statement.

5. In spite of service of summons, Defendant No.1,3,5 and 7 have failed to appear before the court. Hence, they are placed ex-parte.

6. In the written statement Defendant No.2 has denied the entire case of the Plaintiffs by contending that, the suit of the

Plaintiffs is barred under law and barred by Specific Relief Act and genealogy shown in the Plaint is not correct and Plaintiffs have not brought all the members of the family. As such, suit is not maintainable. It is denied that, mother of the Defendant No.2 died on 19-07-2004 at Mulasawalagi village of Sindagi Taluk. But it is contended that, his mother died at Ukkali village. It is denied that, during the lifetime deceased Basappa was in possession and enjoyment of the suit land, after his death the Plaintiffs were came into joint possession and enjoyment of the same. It is contended that, after the death of Basappa, the mother of Defendant No.2 was in possession of suit land as a owner and after her death he is continuing in possession and enjoyment of the suit land. It is denied that, Plaintiffs are absolute owners of suit land, but contended that Defendant No.2 and his brother are owner and possessors of the same. The Assistant Commissioner of Bijapur has also passed order with respect to the same. It is contended that, the Plaintiff is to establish their right and interest over the suit land. It is specifically contended that, the deceased Basappa is brother of their mother, said Basappa was married, but there were no issues to him, his wife was died prior to death of Basappa. The suit land was standing in the name of deceased Basappa and

after his death, the mother of Defendant No.2 and brothers succeeded as per Warsa. It is also contended that, at the time of partition no share was allotted to the mother of Defendant No.2. Therefore, after the death of Basappa his remaining brothers have given the suit land to their mother. Accordingly the name of mother of Defendant No.2 entered in the suit land. Hence, from last 20 years Plaintiff No.2 is cultivating the suit land as owner. After the death of mother of Defendant No.2, himself and his brothers names mutated in the records. The Plaintiffs should prove that, on what basis they are owners of the suit land, but intentionally without there being any reason just to harass the Defendants filed this false suit. The elders of the family have not disputed the ownership and possession of the Defendants over the suit lands, but now upon the instigation of the others Plaintiffs have filed this false suit .Hence, prays for dismiss the same.

7. On the basis of pleadings and rival contentions of the parties, my predecessor in office has framed the following issues:

ISSUES

1. ವಾದಿಯರು ದಾವಾಸ್ಥಿಯ ಮಾಲೀಕರು ತಾವೆಂದು
ರುಜುವಾತುಪಡಿಸುವರೇ?

2. ವಾದಿಯರು ಪ್ರಾರ್ಥಿಸಿದಂತೆ ದಾವಾಸ್ಥಳದಲ್ಲಿ 3/4 ಪಾಲನ್ನು ಪಡೆಯಲು ಅರ್ಹರೆಂದು ರುಜುವಾತುಪಡಿಸುವವರೇ?
3. ವಾದಿಯರ ದಾವೆಯು ಕಾಲಪರಿಮಿತಿಯಿಂದ ಪ್ರತಿಷ್ಠೇಧಿತವಾಗಿದೆಯೇ?
4. ವಾದಿಯರು ಪ್ರಾರ್ಥಿಸಿದಂತೆ ಪರಿಹಾರಕ್ಕೆ ಅರ್ಹರೇ?
5. ಯಾವ ಆದೇಶ ಅಥವಾ ಡಿಕ್ರಿ?

8. In order to prove the case of the Plaintiffs, Plaintiff No.1 himself examined as P.W-1, two independent witnesses examined as P.W.2 and 3 as many as 5 documents are got marked as per Ex-P.1 to P.5. Defendant No.2 himself examined as D.W.1 and one more witness examined as D.W.2, as many as 3 documents are got marked as per Ex.D.1 to D.3. The documents relied upon by the parties are given in the annexure of this Judgment.

9. Heard the arguments of both side.

10. My findings to the above Issues are as under:

ISSUE NO.1 : In the Negative.

ISSUE NO.2 : In the Negative.

ISSUE NO.3 : In the Affirmative.

ISSUE NO.4 : In the Negative.

ISSUE NO.5 : As per final order for the following:

REASONS

11. **ISSUES NO.1**: - In order to prove the case, Plaintiff No.1 himself examined as P.W-1. In the chief-examination, P.W-1 filed his evidence affidavit in consonance with plaint averments, RTC extract for the year 20009-10 in respect of land bearing Sy.No.71/4 measuring 05 acres 38 guntas situated at Ukkali village is marked as per Ex.P-1, The death certificate of Basappa is marked as per Ex.P.2, certified copy of Mutation Register Extract bearing M.E.No.4473 is marked as per Ex.P-3, certified copy of Mutation Register Extract bearing M.E.No.11847 is marked as per Ex.P-4 and the death certificate of Lakkavva is marked as per Ex.P.5.

12. Here it is specific case of the plaintiffs that, main propositus Gurusiddappa and his wife Honnavva having four sons namely Mallappa, Gireppa, Sangappa and Basappa and a daughter namely Lakkavva. The Gurusiddappa died in the year 1960. The suit schedule property land bearing Sy.No.71/4 measuring 5 acres 38 guntas situated at Ukkali village of B.Bagewadi Taluk, Vijayapur District was fallen to the share of

4th son namely Basappa S/o.Gurusiddappa Kalyani. He died on 28-11-1993. The Plaintiffs are his legal heirs. At the time of filing of the suit father of Plaintiff was alive, but he was suffering from ill-health and he was like dead person. The other sons and daughter of main propositus have dead. Their successors are Plaintiffs and Defendants. There is no class-I heirs to deceased Basappa Kalyani. The Plaintiffs have filed an application along with the death certificate of the Basappa Kalyani, to enter their name in records of rights of suit land. But, deceased Lakkavva who is daughter of main propositus got registered her name in Records Of Rights of the suit land. The Village Accountant of Ukkali village only entered her name behind the back of the Plaintiffs. The deceased Lakkavva not at all successor of Basappa Kalyani. The Defendant No.2 to 6 have filed an application before Tahashildar B.Bagewadi and registered their names in the records of rights of suit land. The Defendants being heirs of deceased Lakkavva are having no title or interest over the suit land. On these grounds Plaintiffs filed suit for Declaration to declare that, they are owners of suit land and relief of Permanent Injunction restraining the Defendants from causing interference to the Plaintiffs in possession and enjoyment of the same, alternative relief of Partition if

Defendants proves their interest over the suit land.

13. Further in the cross-examination of P.W.1 the relationship of the parties is admitted. It is admitted that, in the year 1955 there was partition affected between the sons of main propositus. Further P.W.1 is also admitted the partition in the year 1960 and also certification of M.E.No.4473. It is admitted that, as per the said partition Sy.No.360 and 71/2 was allotted to deceased Basappa Gurusiddappa Kalyani. It is also admitted that, at the time of said partition no share was allotted to Lakkavva, who is daughter of main propositus. But, it is elicited that, he do not know that, the elders of the family settled that after the death of Basappa lands fallen to his share shall go to Lakkavva.

14. It is elicited that, at the time of institution of suit Gireppa was alive and they have not made him as a party. It is admitted that, at the time of filing of suit, suit land was standing in the name of Defendants. It is also elicited that, he knew that after the death of Basappa suit land was inherited to Lakkavva. It is also elicited that, elders of the family not disputed and also not objected the Lakkavva to get enter her name in the records. It is

admitted that, himself and other Plaintiffs have also not objected and also not disputed. After the death of Lakkavva names of Defendants mutated in the records of rights of the suit land.

15. It is elicited that, after the death of Basappa Plaintiffs have filed application before the revenue authority to enter their names in the records of suit land and they have produced the said application before the court, but on careful perusal of the records it is crystal clear that, the Plaintiffs have never produced such application before the court.

16. Further on behalf of Plaintiff two independent witnesses namely Mudakappa S/o.Basappa Naikodi and Ningappa S/o. Gurupadappa Oji examined as P.W.2 and 3. In the chief-examination P.W.2 and 3 have deposed Mallappa, Giriyappa, Sangappa and Lakkavva are children of grand-father of Plaintiff No.1. There was partition in their family at that time suit land was fallen to the share of Basappa. During the lifetime he was in possession and enjoyment of the same, after his death Plaintiffs are in possession cultivating the suit land. The Basappa during his life time was staying with his elder brother Gireppa. The said Gireppa is dead and Plaintiff No.6 to 7 are his successors. The

Plaintiffs are successors of deceased Basappa. The Lakkavva, who is sister of deceased Basappa was married about 75-80 years back and given to Kuduresalawadagi village, she was residing therein with her husband, she died in the year-2004. After her death her children i.e. Defendants were doing coolie work and residing at Kuduresalwadi village. The Plaintiffs are permanent residents of Ukkali village. After death of Basappa they have come into possession and enjoyment of suit land and they are the owners of the same.

17. So, on careful perusal of examination-in-chief of P.W.2 and 3 it is clear that, they have come before the court to depose that, Plaintiffs are successors of deceased Basappa. Under the family partition suit land was fallen to the share of Basappa. After his death Plaintiffs have been in possession and enjoyment of the suit land, as such they are owners of the same.

18. But, in the cross-examination of P.W.2 it is elicited that, he had not seen main propositus Gurusiddappa. He is having little knowledge about the partition affected amongst his sons. At the time of partition he was about 10 years old, he do not know in which year partition was affected. He do not know how many

properties were to Gurusiddappa's ancestry. He do not know survey number of the properties allotted to the sons of propstus, but he volunteered that suit land was fallen to the share of sons of Giriyappa and Mallappa. So, upon considering this contradict version of the P.W.2 clearly goes to show that, he do not know about the partition, allotment of shares etc.,.

19. Further, in the cross-examination, it is admitted that after death of Basappa mother of the Plaintiff was in possession and cultivating the suit land. Therefore, where the P.W.2 came before the court to depose that, Plaintiffs are in possession and enjoyment of the suit land, but in the cross-examination he himself admitted that, after death of Basappa mother of the Defendants was cultivating the land. Therefore, the version of P.W.2 is not helpful to the Plaintiff to prove their case.

20. Further in the cross-examination of P.W.3 also it is elicited that, at about 60 years back sons of Gurusiddappa affected partition. He do not know how many properties were included in the said partition and which properties were allotted to his sons. He had not seen the documents pertaining to suit land, he do

not know after the death of Basappa mother of the Plaintiffs got entered her name. Therefore, the evidence of P.W.3 is also not much supporting to the case of Plaintiffs.

21. On the other hand, Defendant No.2 has filed written statement and denied the genealogy as referred in the Plaint by contending that, Plaintiffs have not included all the family members of propositus. As such, suit is not maintainable and it is specifically contended that, at the time of partition amongst sons of propositus it was orally agreed between them that, after the death of Basappa the properties allotted to him shall go to Lakkavva, who is mother of the Defendants. Accordingly, she had filed application before the Revenue Authority and got registered her name in the records of suit land. Further, it is denied that, Plaintiffs are not absolute owners and possessors of the suit land. Their mother Lakkavva was in possession and enjoyment of suit land till her death. After her death, Defendants being her successors mutated their name and they have continuing to enjoy the suit land.

22. To support of the defence, the Defendant No.2 himself examined as D.W.1, RTC Extract for the year 2011-12 in respect

of land bearing Sy.No.71/4 measuring 5 acres 38 guntas situated at Ukkali village is marked as per Ex.D.1, Mutation Register Extract bearing M.R.No.776/2010-11 is marked as per Ex.D.2 and Xerox order copy dated 15-03-2011 of Sub-Divisional Officer is marked as per Ex.D.3.

23. Further in the cross-examination of D.W.1 the relationship between Plaintiffs and Defendants are admitted. It is admitted that, in the year 1962 there was a partition in between sons of Gurusiddappa. Under the said partition suit land was allotted to Basappa. It is denied that, after the death of Basappa Ex.P.4 got certified and he has not preferred any appeal against the same. It is denied that, Plaintiffs are owners and possessors of the suit land. Defendants have falsely created Ex.D.3 behind the back of the Plaintiffs. Except these nothing worth has been elicited from the mouth of D.W.1 to support of Plaintiffs case.

24. Further one more witness namely Shivappa on behalf of Defendants examined as D.W.2. In the chief-examination D.W.2 deposed that, he is well acquainted with the facts and parties of the suit. He is permanent resident of Ukkali. The Defendants are also residents of same village, but now for earning purpose they are residing in different villages. But suit land bearing 74/1 measuring 5 acre 38 guntas is in the possession and enjoyment

of the Defendants. The said land originally belonging to Basappa. The said Basappa during his life time was in possession and enjoyment of the same. After his death Lakkava, who is mother of Defendants was cultivating the suit land and she was in possession of the same. After her death Defendants were came into possession and enjoyment of the suit land. The Plaintiffs never cultivated the suit land at any point of time.

25. Further D.W.2 subjected to the test of cross-examination. In the cross-examination D.W.2 himself admitted that, after the death of Basappa suit land was cultivated by Gireppa till his lifetime. It is also admitted that, till today the Plaintiffs are in possession and enjoyment of the same.

26. Here in the suit, it is for the Plaintiffs to prove that, they being a Class-II heirs of deceased Basappa. They are absolute owner of the suit land. No doubt suit land was allotted to the Basappa and he died on 30-11-1993 as intestate and there is no Class-I heirs to him. The Plaintiffs relied upon the Ex.P.4 i.e. Mutation Registered Extract bearing M.E.No.11847 certified on 19-03-1994. Admittedly, on careful perusal of the same, it is well forthcoming that, after the death of Basappa the names of father

of the Plaintiffs and mother of Defendants being heirs got entered in the records of suit land bearing Sy.No.71/4. It is also case of the Plaintiff that, the Defendants have not challenged the said Mutation Entry, hence same is binding on the Defendants and as per Ex.P.4 Plaintiffs being heirs of deceased Basappa absolute owners of the same. On the other hand the Defendants have denied the entire case of the Plaintiffs and also contended that, at the time of Partition no lands were allotted to the Lakkavva and it was settled between the elders that, the lands allotted to the Basappa shall go to their mother. Accordingly, her mother filed application before the Revenue Authority and got entered her name in the records and after her death Defendants being successor mutated their names. To support of their contention Defendant No.2 also produced certified copy of Mutation Registered Extact bearing M.R.No.776/2010-11 mareked at Ex.D.2 and certified copy of order passed in RTS/EP-63/2009-10 mareked at Ex.D.3. Admittedly as per the contention of the Defendants their names are appearing in the Records Of Rights as per M.R.No.776/2010-11. The doucments marekd at Ex.D.2 and 3 are seriously denied by the Plaintiffs by alleging that, Defendants have colluding with the revenue authority created false and forged documents and registered

their name in the suit land. However, so far as concerned to this Plaintiffs were at liberty to file appeal before the proper authority to get cancelled the said Mutation Entries, but there is no explanation in their pleadings to that effect. On the contrary, in the chief-examination P.W.1 himself admitted that, he that after death of Basappa suit land was inherited to Lakkavva who is mother of the Plaintiffs.

27. It may be pertinent to note the relevant portion of cross-examination of P.W.1 as referred in below:

“ದಾವಾ ಸ್ವತ್ತು ಬಸಪ್ಪನವರು ಮರಣಾನಂತರ ಲಕ್ಕವ್ವರಿಗೆ ಬಂದಿರುವ ಬಗ್ಗೆ ನನಗೆ ತಿಳಿದಿದೆ. ಲಕ್ಕವ್ವನವರು ಸದರಿ ಸ್ವತ್ತಿನ ದಾಖಲಾತಿಗಳನ್ನು ಅವರ ಹೆಸರಿನಲ್ಲಿ ಮಾಡಿಕೊಳ್ಳಲು ಕುಟುಂಬದ ಹಿರಿಯರು ಯಾವುದೇ ತಕರಾರು ಮಾಡಿರುವುದಿಲ್ಲ. ಸದರಿ ವಿಚಾರವಾಗಿ ನಾನು ಮತ್ತು ವಾದಿಯರು ಯಾವುದೇ ತಕರಾರು ಮಾಡಿರುವುದಿಲ್ಲ. ಈ ಸಮಯದಲ್ಲಿ ನನ್ನ ತಂದೆ ಜೀವಿತ ಇರಲಿಲ್ಲ. ಸದರಿ ಲಕ್ಕವ್ವರ ಮರಣಾನಂತರ ಪ್ರತಿವಾದಿಯವರ ಹೆಸರಿಗೆ ದಾವಾ ಸ್ವತ್ತು ಬಂದಿರುತ್ತದೆ ಎಂದರೆ ಸರಿ”.

So, it is admitted that, Plaintiffs themselves nor elders of the family have not made any objection to the Lakkavva to get enter her name in the records. After the death of Lakkavva suit land was inherited to her children i.e. Defendants. Therefore, upon considering the above said version of PW.1 it is crystal clear that,

elders of the family nor Plaintiffs never objected the Lakkavva to get register her name in the records of suit land as per contention taken by the Defendant No.2 in his written statement. So, the allegation of the Plaintiffs that, the said Lakkavva and Defendants have got entered their name behind their back that to colluding with the revenue officials is totally untenable and not acceptable also. Therefore, upon considering the admissions of the P.W.1 it would so probable that, as per the contention of the Defendants after the death of Basappa their mother and thereafter themselves inherited to the suit land and also they are in possession and enjoyment of the same. If at all the said documents are concocted by the Defendants, then Plaintiffs could have been preferred appeal against the same before proper Forum. But they have not done so. It is well settled Principle of Law that unchallenged Mutation Entries are binding on the parties, they cannot denied the same. Hence, the said documents are binding on the Plaintiffs. Here it is for the Plaintiffs to prove their ownership and possession over the suit land, but except Ex.P.4 the Plaintiffs have not at all produced any relevant documents to prove ownership and possession over the suit land. Of course, after Ex.P.4 Defendants' mother mutated her name in the records and after her death Defendants

have registered their name in the records of suit land as per Ex.D.2 and 3 and names of the Defendants are appears in Ex.D.1 i.e. R Of R of the suit land. The documents produced by the Defendants crystal clear that, they are in possession and enjoyment of the same. On the contrary, the Plaintiffs utterly failed to prove their ownership and possession over the suit land. However, the Plaintiffs merely Class-I heirs of deceased Basappa is itself not sufficient to hold that, they have become owners of suit land. Hence, I am of the considered view that, the Defendants have failed to prove their ownership and possession over the suit land. **Hence, my answer to Issue No.1 is in the Negative.**

28. **ISSUE NO.2:** The Plaintiffs have also claimed alternative relief of Partition of 3/4th share in the suit land, if court comes to the conclusion that, they are not owners of the suit land and also Defendants prove their share over the suit land. So far as concerned to this relief, it may be important to note that, the Defendants have denied the genealogy as referred in the Plaint by contending that, the Plaintiffs have not included all the family

members of propositus. In the cross-examination of P.W.2 and 3 Defendants specifically suggested that, there was daughter namely Sangavva to Gurisiddappa. One Kulajappa and Jakkappa are sons of said Sangavva. But, they have stated that, they do know about said Sangavva. At least they could have been denied the said suggestions. Further, so far as concerned to this aspect during the course of argument the learned counsel for the Plaintiff argued that, the Defendants have simply made an suggestion to the witnesses regarding another daughter namely Sangavva and her sons Kulappa and Jakkappa. But Defendants have not produced any documents in respect of the same. However, when the Defendants seriously denied the genealogy by contending that, Plaintiffs have not included all the family members of main propositus, it is for the Plaintiff to establish that, they have made all the family members of the main propositus. But, the Plaintiffs have not contended anything in respect of the said defence of the Defendant with respect to genealogy.

29. Further, during the course of argument the learned counsel for the Defendant has very much argued that, Plaintiffs have filed suit for Declaration and Permanent Injunction and

also alternative relief of Partition, but they have not included all the properties of deceased Basappa. Per contra it is also argued that, there is no specific pleadings in the written statement. As such the Defendants argument is untenable under the law. So far as concerned to this argument of the Defendant on careful perusal of Ex.P.3 i.e. certified copy of mutation register extract bearing M.E.No.4473 certified on 26-01-1960 in respect of partition affected between sons of Gurusiddappa. It is well forthcoming that, suit land bearing Sy.No.71/4 and Sy.No.358/2 were allotted to the Basappa. The Plaintiffs have claimed relief of Partition only in respect of Sy.No.71/4, even they have not assigned any reason or explanation in respect to another land allotted to the Basappa. Therefore, after hearing both side and also perusal of records since the relief of Partition is involved in the present suit this court was pleased to issue direction to the Plaintiff to include all the properties of deceased Basappa and all the family members of deceased Gurusiddappa. At least after that also Plaintiffs could have been file explanation in respect of the same, but they never turned up before the court to assign reasons or explanation to that effect. Hence, in spite of such direction Plaintiffs have not made any attempt to brought all the properties of deceased Basappa into hotch-potch and to implead

the daughter of propositus namely Sangavva. In a partition it is basic Principle that, all the family members and properties shall include in the suit. But, the Plaintiff have not complied the said basic Principles. Therefore, the Plaintiffs are also not entitled to the relief of Partition and Separate Possession. **Accordingly, my answer to Issue No.2 is in the Negative.**

30. **ISSUE NO.3:** This issue is concerned to the maintainability of the suit on Limitation point. Wherein in Para No.10 of the Plaint, it is averred that, the cause of action for the suit arose in 3rd week of May 2011 when Defendants have caused obstruction to the Plaintiffs in peaceful possession and enjoyment of suit land. But, in the cross-examination P..W.1 himself admitted that, they knew registration of Lakkavva's name in the records of suit land at the time of registration itself, but elders of the family and themselves have not disputed the same. It may be relevant to refer the relevant portion:

“ದಾವಾ ಸ್ವತ್ತು ಬಸಪ್ಪನವರು ಮರಣಾನಂತರ ಲಕ್ಕವ್ವರಿಗೆ ಬಂದಿರುವ ಬಗ್ಗೆ ನನಗೆ ತಿಳಿದಿದೆ. ಲಕ್ಕವ್ವನವರು ಸದರಿ ಸ್ವತ್ತಿನ ದಾಖಲಾತಿಗಳನ್ನು ಅವರ ಹೆಸರಿನಲ್ಲಿ ಮಾಡಿಕೊಳ್ಳಲು ಕುಟುಂಬದ ಹಿರಿಯರು ಯಾವುದೇ ತಕರಾರು ಮಾಡಿರುವುದಿಲ್ಲ. ಸದರಿ ವಿಚಾರವಾಗಿ ನಾನು ಮತ್ತು ವಾದಿಯರು ಯಾವುದೇ ತಕರಾರು ಮಾಡಿರುವುದಿಲ್ಲ. ಈ ಸಮಯದಲ್ಲಿ ನನ್ನ ತಂದೆ ಜೀವಿತ ಇರಲಿಲ್ಲ. ಸದರಿ ಲಕ್ಕವ್ವರ ಮರಣಾನಂತರ ಪ್ರತಿವಾದಿಯವರ ಹೆಸರಿಗೆ ದಾವಾ

ಸ್ವತ್ತು ಬಂದಿರುತ್ತದೆ ಎಂದರೆ ಸರಿ”.

Therefore, as discussed in above it is crystal clear that, it is well within the knowledge of elders of the family and Plaintiffs that after the death of Basappa mother of Defendants had got registered her name and they have not objected the same. At this stage, it may be relevant to note as per Article, 58 The Limitation Act,1963 to obtain declaration period of limitation is 3 years when the right to sue first accrues. So, in the present case in hand it was well within the knowledge of the Plaintiffs and elders of the village, but not raised any objection. Now after lapse of several years suit of the Plaintiffs is barred by Limitation.

Accordingly, my answer to Issue No.3 is in the Affirmative.

31. **ISSUE NO. 4:** Herein the suit Plaintiffs have claimed relief of Declaration over the suit land and Permanent Injunction restraining the Defendants from interfering with the peaceful possession and enjoyment of the Plaintiff over the suit land. On the other hand, Sri. MSG counsel for the Defendant No.2, 4 and 6 vehemently argued that, there was no cause of action arose for the Plaintiffs to file present suit. The Plaintiffs have no right to sue against the Defendants in respect of the suit land as per the Provisions of Indian Succession Act. It is also very much argued that, at the time of filing of suit Gireppa, who is 2nd son of

propositus was alive, without obtaining any power of attorney or etc., and also without made him as a party in this suit, the Plaintiffs have filed this false suit just to grab the suit land. On these background it may be important to note that, in the cross-examination P.W.1 to 3 have admitted that, at the time of filing of the suit, who is father of the Plaintiffs was alive. However, the said fact is also admitted by the counsel for the Plaintiffs during the course of arguments. But General Rules of Succession as per the Provision of Sec.8 of Hindu Succession Act, 1956 the property of a male Hindu died intestate shall devolve firstly upon Class-I heir, secondly upon Class-II heirs, when there is no Class-I heirs, thirdly upon the agnates and lastly upon cognates of the deceased. So, the word shall used in the Provisions clear that, it is mandatory for devolve property of male Hindu dying intestate. So at the time of filing of suit, admittedly as per the records of the case there was no Class-I heirs to deceased Basappa. But, there was heirs Entry in Class-II heirs i.e. brother namely Gireppa who is father of the Plaintiffs No.6 to 9. So, the said Gireppa being Class-II heirs was only having right to file suit in respect of the suit land. But, right to sue does not survive on the Plaintiffs over the suit land during the life time of Gireppa. Unfortunately, the Plaintiffs filed this suit during the

life time of their father and they never made him as a party and not even obtained any power of attorney to prosecute the case. It is much argued by the counsel for Plaintiffs that, now the said Gireppa is dead and suit is maintainable. But, the Plaintiffs have not produced the death certificate of Gireppa. However, as per the Provisions of Hindu Succession Act, 1956 at the time of filing of suit right to sue does not survive for the Plaintiffs and the Plaintiffs are not having any right to sue in respect of the suit land. Therefore, the learned counsel for the Defendants rightly point out the Provisions of the Hindu Succession Act, 1956. Hence, for the reasons assigned in above, I am of the opinion that, the suit of the Plaintiffs is not maintainable. The Plaintiffs claims relief of Declaration and Permanent Injunction, but they failed to prove their right and title and also possession over the suit land. Further, they have also claimed relief of partition and not proved their case. Therefore, in view of reasons and discussion held in issue No.1 to 3, I am of the considered view that, Plaintiffs are not entitled to any relief. Hence, upon considering the facts and circumstances of the case and also reasons assigned in above, **my answer to issue No.4 is in the Negative.**

32. **ISSUE NO.5:** - In view of my findings on Issues No. 1 to 4, I proceed to pass the following :

ORDER

Suit of the Plaintiffs is hereby
dismissed.

No order as to cost.

Draw decree accordingly.

(Dictated to the Stenographer directly on computer, typed by him, Judgment corrected and signed by me, then pronounced by me in the Open Court on this the 23rd day of February-2019).

**(SHIVARAJU H.S.)
ADDL. CIVIL JUDGE & JMFC,
BASAVANA BAGEWADI.**

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ANNEXURES

List of Witnesses examined on behalf of Plaintiff:

P.W.1 : Shivappa Mallappa Kalyani.
P.W.2 : Mudakappa Naikodi.
P.W.1 : Ningppa Gurupadappa Oji.

List of Documents marked on behalf of Plaintiff:

Ex.P-1: RTC extract of land bearing Sy.No.71/4 .

Ex.P-2: The death certificate of Basappa.

Ex.P-3: Certified copy of M.E.No.4473.

Ex.P-4: Certified copy of M.E.No.11847.

Ex.P-5: Death certificate of Lakkavva.

List of Witnesses examined on behalf of Defendants:

D.W.1 : Basanagouda Ninganagouda Wadedavar @ Biradar.

D.W.2 : Shivappa Basappa Paranak.

List of Documents marked on behalf of Defendants:

Ex.D-1: RTC Extract of land bearing Sy.No.71/4.

Ex.D-2: Mutation Register Extract bearing M.R.No.776/2010-11

Ex.D-3: Xerox order copy dated 15-03-2011.

**(SHIVARAJU H.S.)
ADDL. CIVIL JUDGE & JMFC,
BASAVANA BAGEWADI.**

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**(Judgment pounced in open court vide
separate order)**

ORDER

Suit of the Plaintiffs is hereby
dismissed.

No order as to cost.

Draw decree accordingly.

**(SHIVARAJU H.S.)
ADDL. CIVIL JUDGE & JMFC,
BASAVANA BAGEWADI.**