

KAVP300008562019



Presented on : 24-10-2019
Registered on : 24-10-2019
Decided on : 19-06-2026
Duration : 6 years, 7 months, 26 days

IN THE COURT OF SENIOR CIVIL JUDGE AND JMFC,
AT: INDI

PRESENT: Sri. KOTEPPA KAMBLE
B.Com., LL.B.,
Senior Civil Judge & JMFC,
Indi.

REGULAR APPEAL No.23/2019

Dated this the 19th day of June, 2026

Appellants:

1. Jainabi W/o Lalsab Mulla,
Age: 65 years, Occ: Household work,
R/o Anjutagi village, Tq: Indi,
Dist: Vijayapur.
2. Jairabi W/o Usman Shaikh,
Age: 33 years, Occ: Household work,
R/o Anjutagi village, Tq: Indi,
Dist: Vijayapur.

(By Sri.S.G.K., Advocate)

Versus**Respondents:**

1. **Mahibbobsab S/o Hussainsab Mulla
deceased by his LRs.**
- 1A. Khatabee W/o Mehaboob Mulla,
Age: 58 years, Occ: Household work,
R/o Anjutagi village, Tq: Indi,
Dist: Vijayapur.
- 1B. Ayub S/o Mehaboob Mulla,
Age: 38 years, Occ: Private driver
R/o H.No.F3 B3 GR Floor,
NrBmboo Hotel, Sonarbhat Verem
Bardez, Goa.
- 1C. Sadham S/o Mehaboob Mulla,
Age: 36 years, Occ: Police,
R/o H.No.F3 B3 GR Floor,
NrBmboo Hotel, Sonarbhat Verem
Bardez, Goa.
- 1D. Shabana D/o Mehaboob Mulla,
Age: 32 years, Occ: Household work,
R/o H.No.F3 B3 GR Floor,
NrBmboo Hotel, Sonarbhat Verem
Bardez, Goa.
- 1E. Zaina W/o Noorahammed Shaikh,
Age: 42 years, Occ: Household work,
R/o H.No.F3 B3 GR Floor,
NrBmboo Hotel, Sonarbhat Verem
Bardez, Goa.

2. Bismilla W/o Usman Shaikh,
Age: 69 years, Occ: Household work,
R/o Anjutagi village, Tq: Indi,
Dist: Vijayapur.
3. **Ameena W/o Mahammadasab
Deceased by her LRs.**
- 3A. Ashama W/o Rijhodin Shaikh,
Age: 55 years, Occ: Household work,
R/o Indi Railway station, Solapur road,
Indi, Tq: Ind, Dist: Vijayapur.
- 3B. Shabana W/o Mohammedsab Indikar,
Age: 40 years, Occ: Business,
R/o Anjutagi village, Tq: Indi,
Dist: Vijayapur.
- 3C. Bhanu W/o Paigambar Gulekar,
Age: 35 years, Occ: Household work,
R/o Nimbaragi, Tq: Chadachan,
Dist: Vijayapur.
- 3D. Abu S/o Mohammedsab Indikar,
Age: 45 years, Occ: Business,
R/o Anjutagi village, Tq: Indi,
Dist: Vijayapur.
- 3E. Modin S/o Mohammedsab Indikar,
Age: 50 years, Occ: Business,
R/o Awaging Board, Dhawarli,
Madagaon, Goa- 403 707.
- 3F. Aadam S/o Mohammedsab Indikar,
Age: 38 years, Occ: Business,
R/o Awaging Board, Dhawarli,
Madagaon, Goa- 403 707.

- 3G. Murtuz W/o Usman Mulla,
Age: 50 years, Occ: Household work,
R/o Sathri Goa, Walpe – 403 506.
4. Husainabi W/o Babusab Mulla,
Age: 61 years, Occ: Household work,
R/o Anjutagi, Tq: Indi,
Dist: Vijayapur.
5. Khazapeer S/o Babusab Mulla,
Age: 40 years, Occ: Agriculture,
R/o Anjutagi, Tq: Indi,
Dist: Vijayapur.
6. Mumtaz W/o Riyaz Shaikh,
Age: 37 years, Occ: Household work,
R/o Gandhi Nagar,
Near Dasiboud Masjid Dandeli.
7. Jairabi W/o Ismail Gondolagi,
Age: 33 years, Occ: Household work,
R/o Salotagi, Tq: Indi,
Dist: Vijayapur.
8. Dadapeer S/o Babusab Mulla,
Age: 38 years, Occ: Agriculture,
R/o Anjutagi, Tq: Indi,
Dist: Vijayapur.
9. Moulali S/o Babusab Mulla,
Age: 31 years, Occ: Agriculture,
R/o Anjutagi, Tq: Indi,
Dist: Vijayapur.

(R-1 to 6, 8 & 9 – Exparte)
(R-3(C) -Absent)

**(R-3(B & D) – By pleader Sri. HMM.,)
(R-1(A to E) – By pleader Sri.MRI.,)**

Nature of the appeal	:	Partition and separate possession						
Judgment against which appeal is preferred.	:	Appeal against the Judgment and decree passed in O.S.No.139/2016 dated 24.09.2019 on the file of learned Civil Judge and JMFC, Indi.						
Date of institution	:	04.04.2011						
Judgment pronounced on	:	24.09.2019						
Total duration	:	<table border="0"> <tr> <td>Year/s</td> <td>Month/s</td> <td>Day/s</td> </tr> <tr> <td>03</td> <td>05</td> <td>20</td> </tr> </table>	Year/s	Month/s	Day/s	03	05	20
Year/s	Month/s	Day/s						
03	05	20						

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J U D G M E N T

1. This appeal is preferred by the appellants/defendant No.1 and 2 being aggrieved by the judgment and decree passed by the learned Civil Judge, Indi on 24.09.2019 in O.S.No.139/2016.

2. For the sake of convenience, the parties to the appeal are referred in the same rank as before the trial court in O.S.No.139/2016.

3. The brief facts of plaintiff's and defendants' case before trial court are as follows:

The plaintiff filed the suit before the learned trial court for the relief of partition and separate possession of his 2/8th share in the 'B' schedule properties by metes and bounds. The suit was filed in respect of land block No.135/1 measuring 9 acres 31 guntas and house property VPC No.28 of Anjutagi village. (hereinafter referred to as suit properties for brevity). It is the case of plaintiff that, himself and defendants are the tenants in common and they are jointly cultivating the suit land. It is the case of plaintiff that the grandfather of plaintiff by name Lalsab Mulla was having sons by name Hussainsab Mulla, Dadasab Mulla and Mohammed Hanif. The grandfather of plaintiff Lalsab Mulla was an agriculturist and cultivating the land old Sy.No.127 measuring 27 acres 30 guntas of Anjuti village as Inamdar. The said survey number was changed into block No.235. The grandfather of plaintiff Lalsab Mulla has died intestate in the year 1972, leaving behind his three sons by name Hussainsab Mulla (father of plaintiff), Dadasab and Muhammad Hanif as

legal heirs. After the death of Lalsab Mulla, the father of plaintiff, Hussainsab Mulla is being the eldest son, the Inam land was mutated in his name. Accordingly, mutation No.296 was certified. It is further case of plaintiff that the father of plaintiff and his brothers were got partitioned their Inam land in the year 1977. In the said partition, the land to an extent of 9 acres 30 gunta was allotted to the share of father of plaintiff, Hussainsab Mulla and it was numbered as block No.235/3. The land in block No.235/1 and 235/2 were allotted to the shares of plaintiff's uncle by name Muhammad Hanif and Dadasab Mulla. Accordingly, mutation No.2705 was certified and their respective names were mutated in the revenue records. After coming into force of the Inam Abolition Act, the lands were vested with the government. Again, the government has re-granted the same lands in favor of father of plaintiff and his uncles. The government has re-granted the land block No.235/1, measuring 9 acres 30 guntas, i.e., suit item No.1 landed property in the name of father of plaintiff

Hussainsab Mulla. It is further case of plaintiff that, his father Hussainsab Mulla was also having house property VPC No.28, which consists of two houses i.e., suit item No.2, measuring 30 x 25 feet and 25 x 15 feet. It is further case of plaintiff that, his father Hussainsab Mulla has died in the year 1999 leaving behind the plaintiff, defendant No.3, 4 and father of defendant No.6 to 10, being the children of first wife Jainama and also he left behind the defendant No.1 and 2 being the daughter-in-law and granddaughter of second wife Jairabi. The first wife of Hussainsab Mulla Jairabi died in the year 1996 leaving behind only son by name Lalsab Mulla. He has died on 06.04.2012 leaving behind the defendant No.1 and 2 as wife and daughter. The plaintiff and defendants are in joint cultivation and enjoyment of suit properties. They are the tenants in common. It is further the case of plaintiff that, at the time of Hissa phodi in the year 2013-14, block number of suit property was changed into Sy.No.235/3 to 235/1, measuring 9 acres 30 guntas, foot kharab 1 gunta. It is

further case of plaintiff that, in a family arrangement, the suit property was divided in between defendant No.2, 5 and plaintiff through M.R.No.111/2014-15. The said mutation M.R.No.111/2014-15 was got canceled as per the order of learned Assistant Commissioner, Indi, in R.T.S. No. 99/2015-16, dated 31-12-2015 with the consent of all the members. Thereafter, the joint names of plaintiff and defendants were mutated in the revenue records of suit land. The plaintiff and defendants are being governed by the Mohammedan Law, they are having fixed shares. The brother of plaintiff by name Maheboobsab has died on 18.10.2002 leaving behind the defendant No.5 to 10 as the legal heirs, wife and children. Till today, there is no partition by meets and bounds. Now, some difference of opinion arose between their family and it is difficult to continue in joint-ness as tenants in common. As such, the plaintiff has approached the defendants in the third week of March 2016 and requested his 2/8th share in the suit properties, but the defendants have flatly refused to allot

his share. Therefore, he is constrained to file the suit before the trial court for the above reliefs.

4. It could be seen from the records of trial court that, despite due service of suit summons to defendant No.6 and 7, they did not enter their appearance, they were placed ex-parte. The defendant No.1 to 5 and 8 to 10 were entered their appearance through their counsel. The defendant No.3 has filed her written statement with counterclaim inter alia admitting the entire case of plaintiff. She also sought her legitimate share in the suit properties. The defendant No.4 and 10 have adopted the written statement and counterclaim filed by the defendant No.3 by filing memo.

5. The defendant No.1 and 2 have filed their written statement *inter-alia*, denying the allegations of the plaintiff. It is contended, the facts stated by the plaintiff in his plaint are far away from the truth. The plaintiff has submitted false genealogy in his plaint. There is no any relation between the defendant No.1, 2, plaintiff and also other defendants. The

propositus Lalsab is not the grandfather of plaintiff and Hussainsab Mulla is not the father of plaintiff. The plaintiff, defendant No.3 to 10 are never related with the defendant No.1 and 2. The Hussiansab Mulla was not having second wife by name Jainama. The Hussiansab Mulla was having only wife by name Jairabi. The Hussiansab Mulla and Jairabi died leaving behind only son Lalsab Mulla. The Lalsab Mulla has died on 06.04.2012, leaving behind the defendant No.1 and 2 as only legal heirs. After the death of Hussiansab Mulla, the defendant No.1 and 2 are being the only legal heirs. They have inherited the suit properties and they are cultivating the suit properties. However, the defendant No.1 and 2 admitted that, originally the land in Sy.No.127 measuring 27 acres 30 guntas was Inam land which was cultivating by the Lalsab Mulla. He died and his children were inherited. Thereafter, it was got divided among the children of Lalsab Mulla. Suit item No.1 landed property was allotted to the share of Hussian Saab Mulla. Again, the suit land was re-

granted in favor of Hussiansab Mulla who is father-in-law of defendant No.1 and grandfather of defendant No.2. It is the specific case of defendant No.1 and 2 in their written statement that, the deceased Hussiansab Mulla was having only wife by name Jairabi and husband of defendant No.1 and father of defendant No.2 by name Lalsab Mulla was only the son of Hussainsb Mulla. The husband of defendant No.1 has died in the year 2012, leaving behind the defendant No.1 and 2 as only legal heirs. Accordingly, mutation No.H-44/80 was certified. As such, they are only the legal heirs of Hussainsab Mulla. By way of inheritance, they become the absolute owners of the suit properties. The Hussainsab Mulla never married second marriage with Jainama i.e., mother of plaintiff. As such, the plaintiff and defendant No.3 to 10 are never related with the defendant No.1 and 2. It is further contended by the defendant No.1 and 2 in their written statement that, the defendant No.3 to 10 colluded with each other by taking undue advantage of innocent nature of

defendant No.1 and 2, they got created the documents and got certified MR No.H-255/2011-12 in respect of land block No.235/3. They have also applied for cancellation of mutation before the learned Assistant Commissioner, Indi by forging the signature of defendant No.1. On the basis of created documents, the defendant No.3 to 10 in order to get the share in the property belongs to defendant No.1 and 2. They have got created the documents which are not binding upon the defendant No.1 and 2. The defendant No.1 and 2 are the absolute owners and in possession of suit properties. The plaintiff and defendant No.3 to 10 are not having any right, title and interest over the suit properties. Therefore, considering these facts, the suit filed by the plaintiff and counterclaim be dismissed with compensatory costs.

6. On the basis of rival pleadings of both parties, the learned trial court framed the following-

ISSUES

1. Whether plaintiff proves that he is entitled for 2/8th share over the suit properties?

2. Whether plaintiff is entitled for the Relief's as sought for?
3. Whether defendants No.1 and 2 prove that plaintiff is no way concerned to the suit properties and also deceased Hussainsab and Lalsab hence, suit is not maintainable?
4. Whether defendants No.1 and 2 prove that suit is not maintainable?
5. What order or decree?

7. The plaintiff in order to substantiate his claim, he got examined himself as PW-1 and produced in all 17 documents which are marked at Ex.P-1 to 17. On the contrary, the defendant No.1 got examined herself as DW-1 and produced in all 6 documents which are marked at Ex.D-1 to 6. Other defendants have not led any evidence.

8. After hearing the arguments of both sides, the learned trial court answered issue No.1 and 2 partly in the affirmative, issue No.3 and 4 in the negative and ultimately suit of the plaintiff is decreed in part and counterclaim of defendant No.3 to 10 is decreed. The learned trial court

allotted 2/8th share to the plaintiff, 1/8th each share to defendant No.3 and 4, 2/8th share jointly to the defendant No.5 to 10 in land bearing Sy.No.235/1 measuring 9 acres 31 guntas. The trial court has not allotted any share to the defendant No.1 and 2 and also no share was allotted in respect of house property. The defendant No.1 and 2 being aggrieved by the judgment and decree of the learned trial court preferred this appeal on the following grounds-

1. The order of trial court is frivolous, vexatious and against to the natural justice, hence, the judgment and decree passed by the trial court is liable to be set-aside-able one.
2. The trial court ought to have considered the written statement of the present appellant i.e., defendant No.1 and 2.
3. The trial court ought to have considered the dispute regarding relationship amongst the plaintiff and defendants and trial court

considered the issue No.3 in the affirmative, but it was held negative.

4. The plaintiff and defendant No.3 to 10 have even though failed to prove their relationship with Hussainsab S/o Lallasab Mulla, the trial court has held the Issue No.3 as Negative.
5. The learned trial court wrongly considered the alleged mutation entries and passed this judgment one sided. The trial court ought to have considered the M.E.No.H44/80 dated 22.12.2012
6. The learned trial court did not considered the contentions made in the written statement, evidences and cross-examination put forth by defendant No.1 and 2
7. The learned trial court has hurriedly passed this judgment one sided without being heard by the side of defendant No.1 and 2.

8. The learned trial court without giving sufficient opportunity to the defendant No.1 and 2 hurriedly passed this judgment.

Amongst other grounds, appellants sought for setting-aside the decree and order of the trial court. They prayed for allowing the appeal.

9. Despite due service of notice to respondents No.2, 4 to 9 did not enter their appearance. The Lars of R1 and 3 are appeared through their counsel.

10. Arguments of counsel for the appellants is taken as heard and heard the arguments of respondents side and perused the records. For having regards to the materials available on record and having heard the arguments, the following points would arises for consideration of this court.

P O I N T S

1. Whether the materials available on record proved that the plaintiff and defendants are the tenants in common and the suit properties are their common tenancy?

2. Whether the materials available on record proved that, the plaintiff and defendant No.3 to 10 are the children and grand children of deceased Jainama who is the second wife of Hussainsab Mulla?
3. Whether the appellants have make out a case that the judgment and decree of the trial court is perverse, capricious, unreasonable and contrary to law and calls for interference of this court?
4. To what order?

11. My findings to the above points are as under:

Point No.1 & 2	:	In the Affirmative
Point No.3	:	Partly in the Affirmative
Point No.4	:	As per final order for the following:

REASONS

12. Point No.1 to 3: Since all these points are interlinked with each other; same are taken up together for common discussion in order to avoid repetition of facts. The plaintiff filed the suit before the learned trial court for the relief of partition and separate possession by metes and bounds in

respect of suit properties. He claimed that, originally the Lalsab Mulla was Inamdar of total land in Sy.No.127 measuring 27 acres 30 guntas of Anjutagi village. Thereafter, he has died and his sons Hussainsab Mulla, Dadasab Mulla and Mohammed Hanif were inherited Inam land. The only name of Hussainsab Mulla, who being the elder son was mutated in the revenue records of entire land. Thereafter, the Hussainsab Mulla and his brothers were got divided the properties. The suit property was fallen to the share of Hussainsab Mulla. Later on, as per the Inam Abolition Act was came into force, all the three shares of Hussainsab Mulla and his brothers were vests with the government. Later, the suit property was re-granted in favour of Hussainsab Mulla. Similarly, other lands were re-granted in favour of brothers of Hussainsab Mulla. Further, it is the case of plaintiff that the suit item No.2 house property, which consisting of two house properties was belongs to Hussainsab Mulla. He has died in the year 1999, leaving behind the plaintiff, defendant No.3, 4

and father of defendant No.6 to 10 are being the children of second wife Jainama. The defendant No.1 and 2 are being the daughter-in-law and grand daughters of second wife Jairabi of Hussainsab Mulla. They are entitled to share in the suit properties. He requested the defendants to allot his share. The defendants refused to allot his share. Therefore, he constrained to file the suit.

13. The defendant No.3, 4 and 10 have entered their appearance. The defendant No.3 filed her written statement along with counterclaim *inter-alia*, admitting the entire case of plaintiff. The defendant No.4 and 10 have adopted the written statement and counter claim of defendant No.3 as their written statement. They also sought their legitimate share in the suit properties. The defendant No.1 and 2 have filed their written statement *inter alia*, denying the relationship of plaintiff, defendants No.3 to 10 with them. They contended that the plaintiff and defendant No.3 to 10 no way related

with them and the plaintiff and defendants No.3 to 10 are not having any right, title and interest over the suit properties.

14. The plaintiff in order to prove his case got examined himself as PW-1 reiterating his plaint averments in chief examination. He produced in all 17 documents which are marked at Ex.P-1 to 17. The document Ex.P-1 is mutation No.296, which was certified after the death of Lalsab Mulla who has died on 07.11.1932 and by way of succession, the Hussainsab Mulla was being the eldest son, inherit along with his brothers, the Inam land in Sy.No.127. The document Ex.P-2, mutation No.2705 through this mutation the three sons of Lalsab Mulla i.e., Hussainsab, Dadasab and Mohammed Hanif @ Mohammedsab were got divided the land block No.235. In the said partition, the land in block No.235/1, measuring 10 acres was allotted to the share of Mohammed Hanif. The land in block No.235/2, measuring 8 acre was allotted to the share of Dadasab and the land in block No.235/3, measuring 9 acres 30 gunta was allotted to

the share of Hussainsab i.e., suit property herein. The document Ex.P-3 is mutation No.2806, as per this mutation, in respect of land block No.234 and 235, as per Inam Abolition Act, Inam was canceled and the lands were vests with the government. The document Ex.P-4 is mutation No.6617, which was effected on 23-02-1999 after the death of Hussainsab, who has died on 09-02-1999. As per this mutation, it discloses that the deceased Hussainsab Mulla was died on 09-02-1999 at Anjutagi village, leaving behind his son Lalsab (husband of defendant No.1 and father of defendant No.2), Bismillah(defendant No.3 herein), Aminabi(defendant No.4 herein), Babusab(father of defendant No.6 to 10 herein), Maheboobsab(plaintiff herein) have inherited as his wives were already died. A perusal of this document it clearly discloses that the deceased Hussainsab Mulla was having these children i.e., husband of defendant No.1 and father of defendant No.2 by name Lalsab, defendant No.3, 4, father of defendant No.6 to 10 and the plaintiff are

the sons and daughters. The defendant No.1 and 2 contended that the plaintiff and defendant No.3 to 10 are no way related with the Hussainsab. The Hussainsab never married with Jainabi and they are not having any share. As per the document Ex.P-4, which was effected in the year 1999, at the undisputed point of time by the revenue authorities. Further, it discloses that, before certifying this mutation, notice to concerned parties were issued, as there was no objection received from any of the parties and it was certified. In order to establish his relationship with the Hussainsab Mulla, the plaintiff produced his school transfer certificate marked at Ex.P-17. In this document, his father's name is categorically mentioned at column No.8 as Hussainsab Mulla and at column No.9 his mother's name is mentioned as Jainama. This document also established the relationship of plaintiff and defendant No.3 to 10 with the Hussainsab Mulla. Therefore, as per these documents Ex.P-4 and 17, it discloses that the plaintiff and defendant No.1 to 10 are the legal heirs

of deceased Hussainsab Mulla. Therefore, contention taken by the defendant No.1 and 2 is not sustainable.

15. At the time of arguments, the learned counsel for appellants/defendant No.1 and 2 vehemently argued that the plaintiff or the defendant No.3 to 10 have not placed the Nikahnama in order to show that their mother Jainabi was married with Hussainsab Mulla. Admittedly, the Jainama, the mother of plaintiff died in the year 1976 and the grandmother of defendant No.1 has died in the year 1966. When they died long back, how can it is possible to produce the Nikahnama by the plaintiff or by the defendant No.3 to 10. It cannot be expected from the plaintiff or the defendants No.3 to 10 to produce such Nikahnama in order to prove the marital relationship with Hussainsab and Jainama. However, the plaintiff by placing the document Ex.P-4 proved their relationship with the Hussainsab Mulla. Under such circumstances, the argument advanced by the counsel for appellants with regards to non-production of Nikahnama and

the plaintiff or the other respondents fails to establish their relationship is not sustainable.

16. The plaintiff also produced document Ex.P-5 mutation No.5989. As per this mutation, on 11.04.1996, as per the order of Land Tribunal, the suit property was re-granted in favour of Hussainsab Mulla. Furthermore, re-grant of suit property in the name of Hussainsab Mulla is not under dispute. It is categorically admitted by the defendant No.1 and 2. Under such circumstances, when the plaintiff and defendant No.3 to 10 have established the relationship with Hussainsab Mulla, they being the children, they are entitled to share in the suit property. The document Ex.P-6 to 8 are the ROR of suit property which are jointly standing in the name of Jairabi, Hussainsab and Maheboobsab i.e., defendant No.1, 5 and plaintiff. The document Ex.P-9 is hand sketch map. The document Ex.P-10 is death certificate of Lalsaheb, the husband of defendant No.1 who has died on 06.04.2012 it is not under dispute. The document Ex.P-11 is

death certificate of brother of plaintiff by name Babusab i.e., father of defendant No.6 to 10 who has died on 18-10-2002, it is also not under dispute. The documents Ex.P-12 and 13 are the handwritten RTC of block No.235 and 235/3. The document Ex.P-13 discloses that, after the death of Hussainsab Mulla, his children Lalsab, Bismillah, Amina, Babusab, Maheboob i.e., husband of defendant No.1, defendant No.3, 4, plaintiff and father of defendant No.6 to 10 were mutated. The document Ex.P-14 is the order of Assistant Commissioner Indi, through which the MR No.111/2014-15 was canceled. The document Ex.P-16 is mutation MR No.T7, through which the joint names were mutated. The document Ex.P-15 is property extract of VPC No.28/1 and 28/2, which discloses that the house property VPC No.28/1 was originally standing in the name of Lalsab Hussainsaab Mulla. Thereafter, it was in the name of Jainabi Lalsab Mulla and others. VPC No.28/2 is appearing in the name of Jainabi Usman Shaikh. This document is in respect

of suit item No.2. As per this document, it discloses that originally the property was standing in the name of husband of defendant No.1 and others, but the plaintiff has not produced any documents to show that the suit item No.2 house property was in the name of Hussainsaab Mulla.

17. In the oral evidence of PW-1, it was suggested that the first wife of Hussainsaab is Zairabi. From the suggestion put to this witness, it discloses that the Hussainsab was having another wife and the Zairabi was the first wife. As per the pleadings of plaintiff, it is admitted fact that the Zairabi was the first wife who has died in the year 1966 and his mother Jainama was married with Hussainsab and she also died in the year 1976. Therefore, from the suggestion itself, it discloses that the Hussainsab was married with the mother of plaintiff. The suggestion was also made to this witness with regards to the partition in the year 2015 family arrangement. Further, as per the document Ex.P-14, the said mutation was canceled by the competent authority. Furthermore, the

divisions made in between Hussainsab and his brothers would also suggested during the cross-examination and same is admitted. Therefore, a clear scrutiny of oral evidence of PW-1, more particularly suggestion made to him discloses that the Zairabi i.e., mother-in-law of defendant No.1 is first wife of Hussainsab and the Jainama was the second wife as pleaded by the plaintiff.

18. Furthermore, in the cross-examination of DW-1, he has categorically admitted that the suit properties are Inam lands. After the death of Lalsab, his sons Dadasab, Hussainsab, Mohammedsaheb were got divided and suit property was fallen to the share of Hussainsab at page No.5, last para and page No.6, first para. Furthermore, the defendant No.2 got examined himself as DW-1. In her cross-examination, she also know all property as considered earlier. The defendant No.1 and 2 produced documents Ex.D-1 to 6. The document Ex.D-1 is mutation No.H-44/80. As per this document, after the death of husband of defendant No.1, this mutation was

certified. No doubt, the defendant No.1 and 2 are only the legal heirs of Lalsab Mulla and accordingly this mutation was certified. This mutation does not disclose the absolute right of the defendant No.1 and 2 over the suit properties. The document Ex.D-2 is MR H-255. This document is also not discloses that the suit property was the absolute property of Lalsab Mulla. The document Ex.D-3 is the death certificate of Lalsab Mulla who has died on 06.04.2012. Similarly, the document was produced by the plaintiff. The death certificate of Lalsab Mulla is not under dispute. The document Ex.D-4 is the death certificate of the father of defendant No.6 to 10. It is also not under dispute. The document Ex.D-5 is the death certificate of Hussainsab Mulla who has died on 09.02.1999. It is also not under dispute. The document Ex.D-6 is ROR of suit property which is jointly standing in the name of both parties.

19. The original owner Hussainsab Lalsab Mulla was died on 09.02.1999. Immediately, after the death of Hussainsab

Mulla, the plaintiff, his brother Babusab, defendant No.3, 4 and husband of defendant No.1 who were died subsequently, they were inherited the property of Hussainsab Mulla. As such, the plaintiff and defendants are being the Mohammedans governed by Mohammedan law. The plaintiff is entitled to 1/4th share, the defendant No.5 to 10 are together entitled to 1/4th share, the defendant No.1 and 2 are together entitled to 1/4th share, the defendant No.3 and 4 are entitled to 1/8th each share in the suit land. The house property was belongs to the husband of defendant No.1. In the said property, the plaintiff and defendant No.3 to 10 are not having any share in the house property. The learned trial court has not allotted any share to the defendant No.1 and 2. The judgment there is no reason why the share is not allotted to these defendant No.1 and 2. Further there is whisper with regard to suit item No.2 house property. However, other aspects has been rightly considered by the learned trial court. Therefore, with regards to share of defendant No.1 and 2, in

respect of share in the suit item No.2 house property, the findings of the trial court is required for modification. **With these observations, this court answered Point No.1 and 2 in the affirmative and Point No.3 is answered partly in the affirmative.**

20. Point No.4: In view of my findings on above points, this point is answered for the following:

ORDER

The regular appeal preferred by the appellants under Sec.96 of CPC is hereby allowed in part.

The judgment and decree passed by the learned Civil Judge and JMFC, Indi in O.S.No.139/2016 dated 24.09.2019 is modified to the following effect-

The plaintiff is entitled to 1/4th share, defendant No.5 to 10 are entitled together 1/4th share, the defendant No.1 and 2 are entitled together 1/4th share, the defendant

No.3 and 4 are entitled to 1/8th each share in the suit item No.1 land bearing Block No.235/1 measuring 9 acres 30 guntas of Anjutagi village.

The plaintiff and defendant No.3 to 10 are not having any share in the suit item No.2 house property, it is the absolute property of defendant No.1 and 2.

Draw decree accordingly.

Return the TCR to the Trial Court along with a copy of the judgment.

(Dictated to the stenographer, transcribed and typed by him, and corrected and signed by me, then pronounced in the open Court on the 19th day of June, 2026)

**(KOTEPPA KAMBLE),
Sr. Civil Judge & JMFC,
Indi.**