

KAVP410001302014



IN THE COURT OF CIVIL JUDGE AND JMFC,

MUDDEBIHAL

Present: Sri.RAMAMURTHY N,
B.A, LL.B,
Civil Judge & JMFC, Muddebihal

O.S.No.306/2014

Dated this the 3rd day of August 2026

PLAINTIFFS:

1. Vijayabai D/o Mangalappa Lamani,
Age: 19 years, Occ: Household work,
R/o: Kolur, Tq: Muddebihal,
Dist: Vijayapur.
2. Sujabai D/o Mangalappa Lamani,
Age: 25 years, Occ: Household work,
R/o: Kolur, Tq: Muddebihal,
Dist: Vijayapur.
3. Shashikalabai D/o Mangalappa Lamani,
Age: 23 years, Occ: Household work,
R/o: Kolur, Tq: Muddebihal,
Dist: Vijayapur.
4. Vilas S/o Mangalappa Lamani,
Age: 22 years, Occ: Nil,
R/o: Kolur, Tq: Muddebihal,
Dist: Vijayapur.
5. Avinash S/o Mangalappa Lamani,
Age: 8 years, Occ: Nil,
R/o: Kolur, Tq: Muddebihal,

Dist: Vijayapur. The plaintiff No.5
is minor rep., by his sister plaintiff No.5.

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

Versus

DEFENDANTS:

1. Mangalappa @ Mangalesh Lalappa Lamani (Dead),
Since dead by his Lrs., plaintiff No.1 to 5 and
defendant No.2 are already on records.
2. Renuka W/o Mangalappa Lamani,
Age: 50 years, Occ: Household work,
R/o: Kolur, Tq: Muddebihal,
Dist: Vijayapur.
3. Vikram S/o Babulal Oswal,
Age: 39 years, Occ: Agriculture,
R/o: Muddebihal, Tq: Muddebihal.
4. Girija W/o Basavaraj Pawar,
Age: 47 years, Occ: Agriculture,
R/o: Muddebihal, Tq: Muddebihal.

(D1 & 2 by Sri.S.H.D., Adv.,)
(D4 by Sri.V.M.N., Adv.,)
(D3 Exparte)

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|---------------------------------|-------------------------------------|
| 1) Date of Institution of suit. | : 31.07.2014 |
| 2) Nature of the suit | : Partition and Separate Possession |
| 3) Recording of Evidence | : 08.06.2017 |
| 4) Closing of Evidence | : 17.03.2026 |
| 5) Pronouncing of Judgment | : 03.08.2026 |
| 6) Total duration of the suit | : Years Months Days |
| | 12 00 03 |

J U D G M E N T

The plaintiffs have filed present suit for the relief of partition and separate possession of their 5/7th shares in the suit schedule property bearing property Sy.No.163/2B measuring 2.39 acres situated at Kolur L.T village of Muddebihal taluk.

2. Brief facts of the plaintiffs case is as under:-

The plaintiffs and defendant No.1 and 2 have a 1/7th share each in the suit property. The plaintiff No.1 to 3 are daughters and plaintiff No.4 and 5 are sons of defendant No.1 and 2. The defendant No.3 and 4 are purchasers of suit property without knowledge and consent of the plaintiffs. Originally the suit land was standing in the name of grandfather of plaintiffs namely Lalappa Ramaji Lamani and subsequently it was divided in two parts as per M.E.No.7596 dated 09.03.2000. As per partition, first part is came to the share of brother of defendant No.1 and second part is came to the share of defendant No.1. The land measuring 1.02 acres went to the canal for irrigation and 2.39 acres is remained which is suit property. In the year 2006, the father of plaintiff

was addicted to bad habits like drinking, gambling and womanizing etc. and started mismanaging the joint family property and sale of suit property made by defendant No.1 and 2 in favour of defendant No.3 without legal necessity is not binding on the plaintiffs.

3. The suit property is ancestral property and at the time of execution of sale deed the plaintiffs were minors. The sale deed was binding only upon defendant No.1 and 2 to the extent of their 2/7th share. The defendants No.1 and 2 are not absolute owners and they have no rights to alienate the entire suit property. The defendant No.3 and 4 are not acquired the title over the suit property by virtue of sale deeds executed by defendant No.1 and 2. The plaintiffs have approached the defendant No.1 to effect the partition, but he has refused for the request of plaintiffs. Hence this suit.

4. In pursuance of summons, the defendant No.1, 2 and 4 have appeared before the Court through their respective counsels and defendant No.4 filed her W.S. The defendant No.3 has not appeared before the court

and he was placed exparte.

5. In the W.S., the defendant No.4 has denied the contention of plaintiffs stating that, the suit of the plaintiff is false. The plaintiff No.1 has got married about 5 years ago and since then not residing in the Kolor village. The plaintiff No.2 also residing in her husband house since before filing of this suit. The plaintiff No.3 to 5 are residing with their parents/defendant No.1 and 2. The relationship between plaintiffs and defendant No.1 and 2 are correct. The defendant No.1 and 2 are parents of plaintiffs and head of their family. The defendant No.1 and 2 for their family and other necessity have sold out the suit property to defendant No.3 on 17.08.2007 through registered sale deed. Thereafter, the defendant No.3 for his legal necessity has sold out the suit property to defendant No.4 on 17.08.2008 through registered sale deed. The defendant No.1 has put his signature as a witness to the sale deed of defendant No.4. In this way, defendant No.4 become absolute owner and possessor of suit property. The plaintiffs have no right, title or interest over the suit property and not entitled to seek partition.

6. The defendant No.4 has constructed two rooms in the suit property. At the time of purchase of the suit property, only one acre is available for cultivation and remaining land had rocks. In the years 2010 to 2012, the defendant No.4 has got demolished the said rocks and constructed the compound surrounding the suit property and dug the bore well to make irrigation by making expenditure of Rs.10,50,000/-. After developing the suit property by defendant No.4, the defendant No.1 with intention to cause loss to her has filed this suit in the names of plaintiffs. At the time of filing suit, the value of the suit property is minimum Rs.30 lakhs and value of share of plaintiffs is about Rs.21,42,857/-. This court has no pecuniary jurisdiction to try the suit. There is no cause of action to the suit. The plaintiffs have filed suit in O.S. No.333/2012 on the subject matter of this suit. During pendency of said suit, the present suit was filed and earlier suit was dismissed on 30.07.2015. By suppressing material facts, the plaintiffs have filed this false suit. Hence, prays for dismiss the suit of the plaintiffs.

7. On the basis of pleadings and materials on record the following issues have been framed.

ISSUES

1. Whether the plaintiffs prove that, they are entitled to 5/7th share in the suit schedule properties?
2. Whether the plaintiffs further proves that, the sale deed is not binding upon them?
3. Whether the defendant proves that, the plaintiffs have no right and title in relation to suit schedule properties?
4. To what decree or order?

ADDITIONAL ISSUE

1. Whether the defendant No.4 proves that, this court has no pecuniary jurisdiction to trial the suit?

Note: The order sheet shows that, the additional issue treated as preliminary issue and as per order dated 20.01.2018 said issue answered in negative stating that, this Court has got pecuniary jurisdiction to try this suit.

8. During the evidence, the plaintiff No.2 examined herself as PW1 and got marked 16 documents as Ex.P1 to 16. The Ex.P1 to 5 and 8 are school certificates of plaintiff No.1 to 5, Ex.P6 is house property tax extract, Ex.P7 is RTC extract of suit property, Ex.P9 is copy of M.RNo.14/2008-09, Ex.P10 is copy of mutation

No.596, Ex.P11 is M.R No.197/2007-08, Ex.P12 is certified copy of sale deed dated 07.08.2008, Ex.P13 is certified copy of sale deed dated 17.08.2007, Ex.P14 is RTC extract of suit property for the year 2011-12, Ex.P15 and 16 are certified copies of RTC extracts of suit property.

9. On the other hand the GPA holder of defendant No.4 by name Basavaraj Pawar examined himself as DW1 and got examined two witness as DW2 and 3 and got marked 27 documents as Ex.D1 to 27. The Ex.D1 to 8 are machinery daily working report of Sri.Durga Earth Movers in the name of defendant No.4, Ex.D9 to 12 are are machinery daily working report of Sri.Tulajabhavi Earth Movers in the name of defendant No.4, Ex.D13 to 15 are payment receipts regarding blast of rocks in the land of defendant No.4, Ex.D16 to 21 are payment receipts regarding making bund in the land of defendant No.4, Ex.D22 is copy of tax invoice dated 07.11.2013 regarding purchase of motor and cable. Ex.D23 is copy of tax invoice dated 07.11.2013 about the purchase of pipes and starter, Ex.D24 is cash bill dated 16.08.2013 of the

borewells in the name of defendant No.4 in respect of drilling the bore-well, Ex.D25 is cash bill dated 06.04.2013 in respect of purchase of PVC pipe, Ex.D26 is receipt of payment in respect of pipe line work, Ex.D27 is RTC extract of suit property.

10. Heard arguments of both counsels and perused the written arguments and materials on record.

11. The Court answers to the aforesaid issues are as under:

Issue No.1 & 2	:	In negative
Issue No.3	:	In affirmative
Issue No.4	:	As per the final order for the following:

REASONS

12. **ISSUE NO.1 TO 3:** These issues are interrelated each other, hence to avoid the repetition of facts and findings both are taken together for common discussion.

13. In order to prove the issue No.1 and 2, the PW1 has taken contention that, the suit property is their ancestral and joint family property and they have 5/7th share in the suit property and the sale deed executed by

defendant No.1 and 2 in respect of suit property is not binding upon them. During cross-examination, the PW1 deposed that, it is true that, the plaintiff No.1 was residing at Vijayapur and not residing at Kolur village. It is true that, she has not residing in her parents' house since her marriage. It is true that, the plaintiff No.3 to 5 are residing with defendant No.1 and 2. She has not put her signature to plaint. Her father not doing any work and used to stay in the house with drunken manner, since her childhood. Her father has got compensation amount on land acquired for the canal. She has a share in the said compensation. It is not correct that, due to shortage of income of suit land, her father and mother have sold out the suit property to defendant No.3 and her father has used the said amount for his family necessity. Obtained the signature of her mother stating that, same was for getting ration card. It is true that, since 2008, the defendant No.4 is in possession of the suit property and cultivating the same. She denied the suggestion that, the defendant No.4 has developed the suit property by removing the rocks and constructed the compound wall.

She further deposed that, It is true that, her father has no source of income and her mother has maintained their family. She denied other all suggestions.

14. In order to prove the issue No.3, the DW1 has taken contention that, the plaintiffs have no right or title on the suit schedule property. During cross-examination, the DW1 deposed that, they have purchased the suit property from defendant No.3 by verifying the document, the defendant No.1 has put his signature as a witness to the said sale deed. During execution of sale deed, the plaintiffs are minors. He don't know that, the suit property was came to defendant No.1 from his father. It is true that, as per Ex.P10, suit property was fallen to the share of defendant No.1. He don't know that, the defendant No.1 has sold out suit property to defendant No.3 for his family necessity. He don't know that, the defendant No.3 has not got signature of the plaintiffs in the sale deed. He denied other all suggestions.

15. In the chief examination the DW2 has stated that, the husband of defendant No.4 has demolished the rocks and constructed the stone bund to the suit

property and made available for cultivation, by drill the bore-well and constructed two rooms. From the date of purchase, the defendant No.4 is in possession of the suit property. During cross-examination, the DW2 deposed that, he has not put his signature as a witness to the sale deed. His land and land of defendant No.4 are adjacent to each other. He denied other all suggestions.

16. The DW3 stated in his chief examination that, he has cultivating the land purchased by the defendant No.4, since 15 years and plaintiffs and defendant No.1 and 2 are not in possession of the said property. During cross-examination, he deposed that, he has not put his signature to the sale deed as a witness and he denied other all suggestions.

17. Upon perusal of documents of PW1, the contents of Ex.P1 to 5 and 8 shows the names of plaintiff No.1 to 5 with their date of birth. The contents of Ex.P6 shows the name of one Lalappa Ramaji Lamani as a owner of house property No.450 situated at Kolor Tanda. The contents of Ex.P7, 9, 12 and 14 shows that, the

defendant No.4 has purchased the suit schedule property from defendant No.3, through registered sale deed on 07.08.2008 and mutation was granted in her name on the basis of sale deed and her name mentioned as a possessor of suit property at the time of filing suit. The Ex.P10 and 16 shows that, the defendant No.1 and others are Lrs., of Lalappa Ramaji Lamani and as per family partition dated 01.12.1999, the second part of the property measuring 4.01 acres in land Sy.No.163/2B is fallen to the share of defendant No.1 as stated in the plaint. The Ex.P11 and 13 shows that, the defendant No.1 and 2 have sold out the property to the defendant No.3 on 17.08.2007 through registered sale deed and mutation was granted in favour defendant No.3 on 19.04.2008. The contents of Ex.P15 shows the name of Lamani Lalappa Ramaji as a possessor of property measuring 8.2 acres in Sy.No.163/2 in the year 1964-65 to 1973-74.

18. Upon perusal of documents of DW1, the contents of Ex.D1 to 12 shows that there was a machinery work in the year 2010 to 2012 got made by

the defendant No.4 and made the payment for said machinery work. The Ex.D13 to 21 shows that, there was a rock blasting work and bund work made in the land of defendant No.4 and they have made payment for the same. The Ex.D22 to 26 shows that there was a drilling of bore-well, purchase of motor, pipes, starter and PVC pipes in the year 2013 in the name of defendant No.4 and DW1. The contents of Ex.27 shows the name of defendant No.4 as a possessor of suit property and nature of possession shows as purchased and there was a bore-well irrigation to the said land.

19. The counsel for plaintiffs argued that, the suit property is ancestral property of the plaintiffs and they have a legitimate share in the same and sale deed executed by the defendant No.1 and 2 is not binding on their shares in the suit property. The evidence placed by the plaintiffs clearly shows that, the defendant No.1 and 2 have sold the suit property without consent of the minor plaintiffs and plaintiffs are entitle for their shares in the suit property.

20. The counsel for defendant argued that, the defendant No.1 and 2 being a Karta of their family have sold out the suit property for their legal necessities. If the Karta has alienated the ancestral property, then his children has no right to challenge the sale made by the Karta of his family. In support of his arguments, the counsel for defendant has relied following decision, AIR 2018 SC 3907.

21. By considering the contention, oral and documentary evidence of both parties, it is not in dispute that, the plaintiffs are children of defendant No.1 and 2 and suit property was fallen to the share of defendant No.1 in the family partition, as defendant No.4 has not disputed the same. According to plaintiffs, the suit property is their ancestral property, the defendant No.1 and 2 have sold out the same without any legal or family necessities, without their consent and they have a legitimate share in the suit property, which was denied by the DW1 stating that, for the legal necessity the defendant No.1 and 2 have sold out the suit property to defendant No.3 and in turn the defendant No.3 has sold

out the same to her and she became a absolute owner and possessor of the suit property and said sale transactions are binding on the plaintiffs' rights.

22. The contents of Ex.P10, 15 and 16 shows that, originally, the land bearing Sy.No.163 measuring 8.02 acres is belongs to grandfather of plaintiffs namely Lalappa Lamani and in the family partition, the suit property was fallen to the share of defendant No.1 as stated in the plaint and contents of Ex.P7, 9, 11 to 14 and Ex.D27 clearly shows that, the defendant No.1 and 2 have sold the suit property to defendant No.3 on 17.08.2007 through registered sale deed and said defendant No.3 has sold out the same to defendant No.4 on 07.08.2008 and mutation was granted in the name of defendant No.4. Further, the defendant No.1 has put his signature as a witness to the sale deed of defendant No.4 as stated in the W.S.

23. According to plaintiffs, they have share and in joint possession of the suit property, at the time of filing suit, but except oral evidence the PW1 has not placed any

materials to shows that, they are in possession of the suit property at the time of filing suit. The contents of Ex.P7, 14 and Ex.D27 shows that, the defendant No.4 is in possession of the suit property at the time of filing suit and the DW2 and 3 also deposed that, since the date of purchase, the defendant No.4 is in possession of the suit property.

24. According to plaintiffs, the defendant No.1 got suit property in family partition and defendant No.1 and 2 have sold out the same to defendant No.3, when they are minors. It is relevant to note that, the Hon'ble Supreme Court in the following case observed in respect of status of the ancestral property, fallen to the share of father as follows:-

**Angadi Chandranna V/s Shankar and others,
(2025) SCC OnLine SC 877,**

"It cannot be disputed that the properties divided among Defendant No.1 and his brothers through partition deed dated 09.05.1986, are joint family properties. However, as per Hindu law, after partition, each party gets a separate and distinct share and this share becomes their self-acquired property and they have absolute rights over it and they can sell, transfer, or bequeath it as they wish. Accordingly, the

properties bequeathed through partition, become the self-acquired properties of the respective sharers."

25. Further, in the following cases observed about the rights of the Karta of the family in respect of coparcenary property as follows:-

1988 AIR 576, 1988 SCR (2) 623, between Sushil Kumar & Another Vs. Ram Prakash & Others

This statement of law has been approved by the Supreme Court in Bhagwan Dayal v. Mst. Reoti Devi, [1962] 3 SCR 440 P.477 Managing Member and His Powers:

In a Hindu family, the karta or manager occupies a unique position. It is not as if anybody could become manager of a joint Hindu family. "As a general rule, the father of a family, if alive, and in his absence the senior member of the family, is alone entitled to manage the joint family property." The manager occupies a position superior to other members. He has greater rights and duties.

The managing member or karta has not only the power to manage but also power to alienate joint family property. The alienation may be either for family necessity or for the benefit of the estate. Such alienation would bind the interests of all the undivided members of the family whether they are adults or minors.

26. In the present case, the Ex.P13 clearly shows that, the defendant No.1 and 2, who are parents of plaintiffs have sold out the suit property which is fallen to the share of defendant No.1 to defendant No.3 for their

family necessity and repaid the loan, which is a legal necessity. As per above said observations of the decisions, the suit property fallen to the share of father of plaintiffs became his separate property in his hand and he has a rights to alienate the same and being a Karta of the family, the defendant No.1 and 2 who are parents of the plaintiffs became a managers of the family and have a rights to alienate their family property for their family and legal necessities and same was binding on their children major and minor plaintiffs.

27. The contents of documents i.e., Ex.D1 to 26 produced by the DW1 are corroborating with her contentions regarding improvement of the suit property by her by demolishing the rocks and stones and drill bore-well in the same.

28. According to PW1, the defendant No.1 has addicted to bad habits and sold out the suit property, without legal necessities, but the plaintiffs have not stated anything about their mother/defendant No.2 who is also one of the party to the sale deed of suit property

and they have not produced any materials to shows that, the suit property was sold out by the defendant No.1 and 2 without legal necessity. Therefore, in absence of sufficient materials, the contention of plaintiffs that, the suit property is their ancestral and joint family property at the time of filing suit, the defendant No.1 and 2 have sold out the suit property without legal necessities, without their consent and they have a share in the same is not considerable and the materials placed by the DW1 shows that, she has made improvement of the suit property after purchase and in possession of the same at the time of filing suit.

29. Therefore, by considering the evidence on record and observation of the above coated decision, opinion of this court is that, the plaintiffs have failed to prove that, they have a share in the suit property and the sale deed executed by defendant No.1 and 2 is not binding on them and the defendant No.4 has proved that, she is the absolute owner of the suit property and plaintiffs have no right and title on the suit property.

Hence, this Court answered issue No.1 and 2 in the negative and issue No.3 in the affirmative.

30. **ISSUE NO.4:** For the discussed reasons in the issue No.1 to 3 and answer given to the same this Court proceed to pass the following:

ORDER

The suit of the plaintiffs is
dismissed with cost.

Draw decree accordingly.

(Dictated to the Stenographer, transcribed by him, corrected and then pronounced by me in the open Court on this the **3rd day of August 2026**)

(RAMAMURTHY N)
Civil Judge & JMFC,
Muddebihal.

ANNEXURES

WITNESSES EXAMINED ON BEHALF OF THE PLAINTIFF:

P.W.1: Sujabai @ Sujatha

DOCUMENTS MARKED ON BEHALF OF THE PLAINTIFF:

Ex.P1 to 5: School certificates

Ex.P6: Copy of house property tax extract

Ex.P7: RTC extract

Ex.P8: School certificate

Ex.P9: Copy of M.R No.14/2008-09

Ex.P10: Copy of mutation No.596

Ex.P11: Copy of M.R No.197/2007-08

Ex.P12: C/c of sale deed dated 07.08.2008

Ex.P13: C/c of sale deed dated 17.08.2007

Ex.P14: RTC extract

Ex.P15 & 16: C/c of RTC extracts

WITNESSES EXAMINED ON BEHALF OF THE DEFENDANT:

D.W.1: Basavaraj Pawar

D.W.2: Bhimasingh Lamani

D.W.3: Gangadhar Chavhan

DOCUMENTS MARKED ON BEHALF OF THE DEFENDANT:

Ex.D1 to 8: Copies of machinery daily working report of Sri.Durga Artha Movers

Ex.D9 to 12: Copies of machinery daily working report of Sri.Tulajabhavi Artha Movers

Ex.D13 to 15: Payment receipts

Ex.D16 to 21: Payment receipts

Ex.D22: Copy of tax invoice dated 07.11.2013

Ex.D23: Copy of tax invoice dated 07.11.2013

Ex.D24: Copy of cash bill dated 16.08.2013

Ex.D25: Copy of cash bill dated 06.04.2013

Ex.D26: Payment receipts

Ex.D27: RTC extract

**(RAMAMURTHY N)
Civil Judge & JMFC,
Muddebihal.**