

KAVP420000992025



**IN THE COURT OF V ADDITIONAL DISTRICT AND
SESSIONS JUDGE, VIJAYAPURA, (TO SIT AT
MUDDEBIHAL).**

DATED THIS THE 02nd DAY OF JUNE 2026

PRESENT

**Sri. Sachin Kaushik R.N
B.Sc., LL.M**

V Additional District and Sessions Judge,
Vijayapura, To sit at Muddebihal.

R.A.No.5008/2025

(Arising out of F.D.P.No.5/2015)

- Appellants:**
1. Huligewwa D/o Muttanna Waddar
Now Married and called as
Huligewwa W/o Timmanna Gejjenal
Age:32 years Occ:Household work
R/o Sambalapur-584101
Tq:Chillanur Dist:Raichur
 2. Shrimantewwa W/o Basavaraj
Waddar, Age:45 years
Occ:Household work
R/o Netaji Galli At-Muddebihal
586212, Dist:Vijayapura
 3. Chandrashekhar @ Shekarappa
S/o Annappa Waddar
Age:45 years Occ:Household work
R/o Netaji Galli

At-Muddebihal-586212

Dist:Vijayapura

(Rep. by Sri.V.S.B/S.B.S., Advocate)

///Versus///

- Respondents:**
1. Mutturaj S/o Vithal Bandiwaddar
Age:33 years Occ:Agriculture
R/o Savalagi-587330
Tq:Jamakhandi Dist:Bagalkot
 2. Rajashree W/o Balaram Shilpi
Age:32 years Occ:Household work
R/o Savalagi-587330
Tq:Jamakhandi Dist:Bagalkot
 3. Sidduba S/o Vithal Bandiwaddar
Age:31 years Occ:Student
R/o Savalagi-587330
Tq:Jamakhandi Dist:Bagalkot
 4. Bhagyashree W/o Anil Chavan
Age:30 years Occ:Household work
R/o Savalagi-587330
Tq:Jamakhandi Dist:Bagalkot
 5. Shantawwa W/o Yamanappa
Hadalageri

Since deceased by Her legal heirs
 - 5A. Yamanappa S/o Yallappa Hadalageri
Age:75 years Occ:Pensioner
R/o Sadashiv Nagar
BLDE Road
At-Vijayapura-586101

5B. Anilkumar S/o Yamanappa
Hadalageri, Age:41 years
Occ:Agriculture
R/o Sadashiv Nagar, BLDE Road
At-Vijayapura-586101

**(Rep. by R1 to 4 Sri.M.H.K., Advocate
R5 (a) and (b) placed ExParte)**

J U D G M E N T

The defendants No.2 to 4/appellants have preferred this appeal U/Sec.96 and 97 R/W O.XLI Rule 1 of C.P.C., against the final decree passed in F.D.P.No.5/2015. Suit schedule properties are lands bearing (1) Sy.No.109/3 measuring 6 acres, (2) Sy.No.110/1 measuring 17 acres 25 guntas, both in Shirol village, Muddebihal, (3)Sy.No.7/1 measuring 5 acres 35 guntas, (4)Sy.No.8/1 measuring 3 acres 32 guntas and (5)Sy.No.37/1 measuring 5 acres 31 guntas, the said remaining 3 lands in Mudnal village, Muddebihal.

2. For sake of convenience, the parties shall be referred by their ranks in the suit and FDP.

3. The plaintiffs No.1 to 4 together filed petition U/O.XX Rule 18 R/W S.54 of C.P.C., for partition and

separate possession of 1/5th share in suit schedule properties. The plaintiffs/petitioners have filed memo on 20.03.2021 in FDP proceedings, that, they do not want any share in housed properties, and subsequently on 11.08.2022 the said memo was dismissed as not pressed. They have prayed for partition and separate possession of 1/5th share in suit schedule properties.

4. The respondents No.2 to 4 have filed objections that, earlier FDP was filed on 25.01.2012 by respondents No.3 and 4 in FDP No.5/2015, and same was withdrawn on 07.03.2015. They have also stated that, the petitioners have in paragraph No.7 of the petition stated that, CTS No.1916 has been sold out, and therefore they do not pray for partition and separate possession of the said property. As the petitioners have received the proceeds in the said sale of CTS No.1916, this petition deserves to be dismissed.

5. The trial court framed following 3 points for consideration:

1. Whether the commissioner report is proper and correct?

2. Whether the petitioners have made out sufficient grounds to allow the petition?

3. What order?

6. The trial court answered the points for consideration as follows:

Point No.1 : In the affirmative

Point No.2 : In the affirmative

Point No.3 : As per final order

7. Being aggrieved by drawing final decree, the defendants No.2 to 4 in this appeal have stated that, the preliminary decree is with respect to $1/20^{\text{th}}$ share to the plaintiffs No.1 to 4 together, but court commissioner's report and Watak-takta $1/5^{\text{th}}$ share has been granted to the plaintiffs No.1 to 4 which is erroneous, and therefore they have prayed to set-aside final decree dated 06.08.2025.

8. The respondents No.1 to 4 have filed objections that, the exact share of plaintiffs No.1 to 4 together i.e., $1/5^{\text{th}}$ share has been partitioned and separate possession

is given, and there is no error committed by the trial court, and has prayed to dismiss the appeal.

9. The points that arise for determination are as follows:

1. Whether the petitioners have proved that, they are entitled for 1/5th share in suit schedule properties?

2. Whether the petitioners have proved that, their 1/5th share has been partitioned?

3. Whether the petitioners have proved that, the court commissioner's report and watak-takta are legal and correct?

4. Whether the final decree dated 06.08.2025, passed by trial court is perverse, and calls for interference?

5. What order or decree?

10. Heard both sides and perused documents.

11. The answers to the above points are:

Point No 1: In the Affirmative

Point No 2: In the Affirmative

Point No 3: In the Affirmative

Point No 4: Partly in the Affirmative

Point No 5: As per final order, for the following:

REASONS

12(a). **Points No.1 to 4:-** As these points are interlinked, they are taken together for consideration.

(b). The order of trial court dated 06.08.2025 is highly confusing. In the narration portion, the trial court has mentioned about the $1/5^{\text{th}}$ share claimed by the petitioners, in place of $1/20^{\text{th}}$ share. But in reasons, no separate reasoning or no separate order in the entire order sheet has been passed with the respect to $1/5^{\text{th}}$ share. But the commission warrant issued to the Tahasildar, Muddebihal on 15.06.2018 is with respect to partitioning $1/5^{\text{th}}$ share. Again while issued commission warrant with respect to CTS No.1306 it was given with respect to $1/20^{\text{th}}$ share. During the course of arguments, all this was noticed, Learned Advocate for respondent submitted that, he is not going to press his petition with respect to CTS No.1306, and he filed memo on 21.04.2026 before the appellate court i.e., this court, that he is giving up share with respect to CTS No.1306 or

any CTS property and same was accepted on the same day i.e., 21.04.2026. The only defect in the order of the trial court dated 06.08.2025 is that, there is no separate finding given with respect to 1/5th share to the petitioners with respect to the 5 suit schedule landed properties.

13. The relationship between the parties is not in dispute. The nature of the property as joint family property is not in dispute. Obviously, the trial court had earlier determined the share considering notional partition and granted 1/20th share. But as per Hindu Succession Act-1956, even daughters are entitled for equal share, just as sons. The preliminary decree was passed on 13.04.2005. Now more than 20 years have passed from the date of preliminary decree. Already legal heirs of plaintiff have come on record. Hence, under these circumstances, it is not necessary that, the preliminary decree has to be separately challenged and considered, but the quantum of share can be looked into and determined by this appellate court also. The decision of **Hon'ble High Court of Karnataka passed in WP**

No.12689/2021 **dated** **28.10.2025** between
Smt.Sokkamma Vs H.N.Sonappa and others, the
Hon'ble High Court of Karnataka has held that, the
quantum of share, or property inadvertently left in the
suit can be considered in final decree proceedings, so
that, justice is delivered and multiplicity of proceedings
is avoided. The said decision is aptly applicable herein.
This court finds that, the petitioners are entitled for 1/5th
share as per the provisions for Hindu Succession Act-
1956, and the trial court has rightly accepted the
commissioner's report and the watak-takt of 1/5th share,
and has drawn final decree. Accordingly, this court also
answers both the points for consideration of the trial
court in the affirmative. Accordingly, points No.1 to 3
herein, are answered in the **Affirmative**, and point No.4
Partly in the Affirmative.

14. **Point No.5:-** For the aforesaid reasons, this court
proceeds to pass the following.

ORDER

The appeal filed by defendants No.2 to 4/appellants U/Sec.96 and 97 R/W O.XLI Rule 1 of C.P.C., is hereby partly allowed.

The petition filed U/O.XX Rule 18 R/W S.54 of C.P.C., by petitioners No.1 to 4 is hereby partly allowed.

The court commissioner's report and watak-takta are hereby accepted and shall form part of final decree only with respect to 5 landed properties; and not the CTS properties.

Parties shall bear their own costs in suit and appeal.

The final decree dated 06.08.2025 passed by Learned Senior Civil Judge and JMFC., Muddebihal in FDP No.5/2015 stands hereby modified.

Draw final decree accordingly, without insisting for any non judicial stamp papers, as the same has already been provided before trial court.

**Office is directed to send trial court
records to concerned court.**

(Dictated to the Stenographer, transcribed and computerized by her, corrected by me and then pronounced in the open Court, on this the **02nd day of June, 2026**)

(Sachin Kaushik R.N)
V Additional District and Sessions
Judge, Vijayapura, To Sit at
Muddebihal.