

KAVP500037182024



Presented on : 29-08-2024
Registered on : 03-09-2024
Decided on : 01-07-2026
Duration : 01 years, 09 months, 29 days

**IN THE COURT OF HON'BLE I ADDL. SENIOR CIVIL
JUDGE AND JMFC, SINDAGI
AT: SINDAGI.**

Present – Shri. Abdul Rahiman .A. Mulla
B.A.L.,LL.B.(Hon's)
**I Addl. Sr. Civil Judge & JMFC,
Sindagi.**

Dated this 1st day of July-2026

O.S.No.155/2024

PLAINTIFFS

1. Sharadabai W/o. Gundappa
Baluragi,
Age : 54 years, Occ: H.H.Work
R/o. Gundagi, Tq : Almel
2. Jagadevi W/o. Sharanappa
Baluragi
Age : 45 years, Occ: H.H.Work,
R/o. Huvinahalli, Tq : Almel
Dist: Vijayapur.

(R/by Sri.R.D.A., Adv.,)

DEFENDANTS

1. Godubai W/o. Shivappa Wali
Age: 58 years,
Occ.: H.H.Work
R/o. Bantanal, Tq : Indi.

2. Gurushant S/o. Hanamantraya
Karajagi
Age : 56 years, Occ: Agril
3. Ratanabai W/o. Rajashekhar
Balagumpi
Age: 52 Years, Occ: H.H.Work
R/o. Huvinahalli, Tq : Almel.
4. Siddawwa W/o. Gururaj Badadal
Age: 40 years, Occ: H.H.Work
R/o. Afzalpur, Tq : Afzalpur
Tq & Dist : Vijayapur.

**(Def No.2 R/by Sri.S.K.P.,
Adv.,)
(Def.No.1, 3 & 4 Ex-parte)**

Date of institution of suit	03-09-2024
Nature of the suit	Partition & Separate Possession
Commencement of evidence	30-08-2025
Date of judgment pronounced	01-07-2026
Total Duration	Year/s Month/s Day/s 01 09 29

-:J U D G M E N T:-

1. The present suit is filed by plaintiffs against defendants for the relief of partition and separate possession of their 2/6th share in suit schedule properties by metes and bounds.

The brief facts of the case is as under:

2. That suit schedule properties are landed properties bearing R.S.No.4/1 measuring 4 acres 5 guntas, R.S.No.41/1 measuring 10 acres 15 guntas and R.S.No.106/2 measuring 10 acres 22 guntas, all are situated at Huvinahalli village, Almel taluka.

3. That plaintiffs and defendants are siblings. The suit schedule properties are ancestral joint family properties of them and they are in joint possession and enjoyment of the same. No partition is effected in between them by metes and bounds. That suit schedule properties devolved upon their father from ancestors and after the death of their father, suit schedule properties were only mutated in the name of defendants, but they are jointly cultivating suit schedule properties. That defendant No.2 has managed to get his name entered to suit schedule properties from his father and same is not binding on plaintiffs. When plaintiffs requested defendants to effect partition

in suit schedule properties, defendants have refused for it. Hence, the present suit.

4. After registration of suit, suit summons was issued to defendants, wherein defendant No.1, 3 and 4 remained ex-parte. Defendant No.2 appeared through his counsel and filed written statement and counter claim contending that, he is owner in possession and enjoyment of suit schedule properties and only to harass defendant No.2, plaintiffs have filed present suit and prayed to dismiss the suit of plaintiffs with costs.

5. **On the basis of pleadings, this court framed the following:**

ISSUES

1. Whether plaintiffs prove that, they along with defendants are in joint possession and enjoyment of suit schedule properties ?
2. Whether plaintiffs prove that, suit schedule properties are ancestral joint

family properties and no partition has been effected between them by metes and bounds?

3. Whether defendant No.2 is entitled for the relief as claimed in counter claim?

4. Whether plaintiffs are entitled for reliefs as sought for?

5. What order or decree?

6. In order to prove their case, plaintiffs examined plaintiff No.1 as P.W.1 and got marked documents at Ex.P.1 to Ex.P.6 and plaintiff No.2 was examined as PW.2 and closed her side. On the contrary, defendant No.2 has chosen not to lead any evidence and not cross-examined both PW.1 and PW.2.

7. Heard. Perused the records.

8. My findings to the above issues are as under:

Issue No.1 : In the Affirmative

Issue No.2 : In the Affirmative

Issue No.3 : Does not survive for consideration

Issue No.4 : In the Affirmative

Issue No.5 : As per final order
for the following;

:R E A S O N S:

9. ISSUE NO.1 to 4: As these issues are interlinked with each other, they are taken together for discussion to avoid repetition of facts.

10. It is the specific case of plaintiffs that, suit schedule properties are ancestral in nature, wherein both plaintiffs and defendants have got share in it. In order to prove the same, plaintiffs examined plaintiff No.1 as P.W.1, who filed her affidavit in lieu of examination-in-chief by reiterating the averments of plaint and got marked documents at Ex.P.1 to Ex.P.6. The entire contention taken by PW.1 has remained unchallenged and unrebutted.

11. On perusal of documentary evidence, it reveals that, Ex.P1 to Ex.P3 are RTC extracts of suit schedule properties for the year-2023-24 which are mutated in the name of defendant No.2. Ex.P4 is certified copy of M.E.No.203, which reveals that, after

the death of Jagadevappa, suit schedule properties devolved upon his eldest son Siddaramappa being minor, represented by his mother Shivalingawwa. Further, Ex.P5 is certified copy of M.E.No.861, which reveals that, both brothers Siddaramappa and Hanamantraya partitioned family properties, wherein suit schedule properties were allotted to the share of Hanamantaraya i.e., father of plaintiffs and defendants. Ex.P6 reveals that, without there being any registered document, name of defendant No.2 alone came to be mutated to suit schedule properties on the basis of relinquishment on 19.03.2014.

12. It is well settled principle of law that, any document which has the effect of creating and taking away rights in respect of immovable property must be registered. The same is held by **Hon'ble Supreme Court of India in decision reported in (2018) 7 SCC 646.** Hence, without there being any registered document, defendant No.2 cannot claim his right over suit schedule properties contending that, he is

absolute owner in possession and enjoyment of suit schedule properties based on mutation entries i.e., Ex.P6. Therefore the contention taken by defendant No.2 cannot be believed.

13. Further, plaintiffs examined plaintiff No.2 as PW.2, who has filed her affidavit in lieu of examination-in-chief by reiterating the averments of the plaint. The entire contention taken by PW.2 also has remained unchallenged and unrebuted before the court. It is not the case of defendant No.2 that, this court has not provided him with opportunity to cross-examine both PW.1 and PW.2 and also lead his side evidence. In the absence of any type of cross-examination and evidence led by defendant No.2, adverse inference shall have to be drawn against defendant No.2 and it can be safely held that, contention taken by both PW.1 and PW.2 are correct and true.

14. The documentary evidence adduced by plaintiffs clearly reveals that, suit schedule properties

are ancestral joint family properties, which devolved upon father of plaintiffs and defendants Hanamantaraya and admittedly after the death of Hanamantaraya no partition has been effected between plaintiff and defendants by metes and bounds.

15. Furthermore defendant No.2 has paid court fee on counter claim and his prayer is to dismiss the suit of plaintiffs with costs. Therefore, plaintiffs are entitled for the reliefs as sought for in the plaint and as there is no specific prayer for counter claim, question of giving finding on Issue No. III does not arise and said issue does not survive for consideration of this court. Hence, for the above said reasons **I answer Issue No.1, 2 and 4 in the “Affirmative” and Issue No.3 as does not survive for consideration.**

16. ISSUE NO.5: For the findings and reasonings given to Issue No.1 to 4, I proceed to pass following;

:O R D E R:

The suit of plaintiffs for the relief of partition and separate possession of their 2/6th share in suit schedule properties is hereby decreed with costs.

The plaintiffs and defendant No.2 are entitled for 2/6th share each in suit schedule properties by metes and bounds.

Court commissioner to be appointed to divide suit schedule properties in between plaintiffs and defendants by metes and bounds.

The counter claim filed by defendant No.2 is hereby dismissed.

Draw preliminary decree accordingly.

(Dictated to the stenographer directly on computer, corrected, signed by me and then pronounced in open court on 01-07-2026).

**(Abdul Rahiman .A. Mulla)
I Addl. Sr. Civil Judge & JMFC
Sindagi.**

ANNEXURES**List of witnesses examined for the plaintiff/s:**

PW.1 : Sharadabai W/o. Gundappa Baluragi

PW.2 : Jagadevi W/o. Sharanappa Baluragi

List of documents exhibited for the plaintiffs/s.

Ex.P1 to P3: RTC extracts.

Ex.P4 & P5: C/c of mutation extracts.

Ex.P6 : C/c of mutation register.

List of witnesses examined for the defendant/s:

NIL

List of documents exhibited for the defendant/s:

NIL

**I Addl. Sr. Civil Judge & JMFC
Sindagi.**