

KAYG210003192019



**IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC.,
SHAHAPUR.**

Present: **Smt.Hema Pastapur**, B.A., LL.B.
Senior Civil Judge and JMFC, Shahapur.

O.S.No.93/2019

Dated this 07th day of March -2026

Plaintiff:-

1. Lachamanna S/o Bheemaraya @
Bhimanna Hulkal, Age: 45 years,
Occ: Agri, R/o Village Sirwal, Tq:
Shahapur, Dist. Yadgir, Now residing at
Wadgera, Tq: Wadgera, Dist. Yadgir.

(By Sri. M.R.B., Advocate)

Versus.

Defendants:-

1. Hanamanthi W/o Tippanna Hulkal,
Age: 70 years, Occ: H.H., R/o Shettikera,
Ayyanna Doddi, Tq: Shahapur, Dist.
Yadgir.
2. Manappa @ Malappa S/o Tippanna
Hulkal, Age: 50 years, Occ; Agri,
R/o Bidrani, Tq: Shahapur, Dist. Yadgir.
3. Baslinappa S/o Tippanna Hulkal, Age: 46
years, Occ: Agri, R/o Sirwal, Tq:
Shahapur.
4. Gayatramma D/o Tippanna Hulkal, Ae:
40 years, Oc: H.H and Agri, R/o
Shettikera, Ayyanna Doddi, Tq:
Shahapur, Dist. Yadgir.

5. Mallappa S/o Bassappa Hattigudur, Age: 50 years, occ: Agri, R/o Village Sirwal, Tq: Shahapur, Dist. Yadgir.
6. Shankrenna S/o Ambanna Desai, Age: 65 years, Occ: Agri, R/o Village Sirwal, Tq: Shahapur, Dist. Yadgir.
7. The Bank Manager, Canara Bank, Branch Sirwal, Tq: Shahapur, Dist. Yadgir.

(Defendants No.1, 2 and 4 - Exparte, Defendant No.3 by Sri. H.C.R., Advocate, Defendant No.5 by Smt. P.N.J., Advocate and Proposed Defendants No.6 and 7 - Absent.)

Nature of the suit : Partition and Separate Possession .

Date of institution of the suit : 30.08.2019

Date of commencement of evidence : 19.02.2020

Date of disposal : 07.03.2026

Total duration	Year/s	Month/s	Day/s
	06	06	05

Suit schedule properties are as under :-

1. Land bearing Sy.No.177/2 measuring 02 acres 18 guntas.
2. Land bearing Sy.No.178/1 measuring 01 acre 05 guntas.
3. Land bearing Sy.No.161/7 measuring 04 acres 18 guntas.

All are situated at Sirwal village, Tq: Shahapur, Dist. Yadgir.

J U D G M E N T

That, the plaintiff filed the present suit for Partition and Separate Possession.

Facts of the case are as under :-

1. That, one deceased Shri. Lachman Hulkal was the original propositus of the family of the plaintiffs and defendants No.1 to 4. That, the said Lachamana Hulkal had got two sons by name Shri. Tippanna and Shri. Bheemaraya @ Bheemanna. That, the said Tippanna died leaving behind him his wife Smt. Hamanti – defendant No.1 and two sons by name Shri. Manappa @ Malappa and Shri. Basalingappa – defendant No.3 and a daughter by name Smt. Gayatriamma – defendant No.4.
2. That, the said Bheemaraya died leaving behind his wife Smt. Devakki who gone in second marriage. That, the Bheemaraya and Devakki have got a son by name Shri. Lachmanna – plaintiff.
3. That, the suit properties are the ancestral and joint family properties of the plaintiffs and the

defendants No.1 o 4 and they are in joint possession and enjoyment of the said properties and till today partition has not taken place between them.

4. That, the suit items No.1 and 2 are standing jointly in the name of the defendants No.2 to 5 nominally and the suit item No.3 is standing in the name of the defendant No.2 nominally. That, the defendant No.5 though, is no way concerned to the family of the plaintiffs and defendants No.1 to 4 and to the suit properties but, in ROR's in respect of 01 acre 02 guntas in Sy.No.177/1 and 38 guntas in Sy.No.178/1 in his name had been illegally entered.

5. That, one Shri. Peer Sab S/o Nabisab Madderki on 01.04.1996 had purchased 03 acres in Sy.No.178/1 and remaining 01 acre 05 guntas is standing in the name of the defendants No.2 to 5. That, K.I.A.D.B. for Laying the railway line from Wadi to Gadag had acquired 31 guntas in the land bearing Sy.No.161/7

and for which the defendant No.2 had received the compensation amount of Rs.13,56,250/-.

6. That, recently the defendants colluding with each other have tried to sell the suit properties and have mortgaged 04 acres 18 guntas of Sy.No.161/7 to one Shri. Shankranna S/o Ambanna Desai for Rs.12,00,000/-. That, when the plaintiff had demanded the defendants No.1 to 4 for allotting his legitimate share in the suit properties then they have faltely refused for the same. Hence, the plaintiff has knocked the doors of justice.

7. That, on suit summons being served, the defendants No.1, 2 and 4 have not appeared and they are placed as exparte and the defendants No.3 and 5 have appeared through their learned counsel. That, the plaintiffs subsequently have got impleaded the proposed defendants No.6 and 7. That, the proposed defendants No.6 and 7 have not appeared before this

Court. That, the defendant No.3 has not submitted his written statement.

8. That, the defendant No.5 has submitted his written statement, wherein he has admitted the relationship of the plaintiff and defendants No.1 to 4 and denied the rest of the plaint averments. That, the defendant No.5 has pleaded that long back the plaintiff and defendants No.1 to 4 have got partitioned their joint family properties and in alleged oral partition, 03 acres in Sy.No.178/1 had been allotted to the share of the plaintiff No.1 and remaining suit lands have been allotted to the share of the defendants No.1 to 4.

9. That, the defendant No.5 has averred that in alleged partition 01 acre 02 guntas in Sy.No.178/1 towards Western side and 38 guntas towards Eastern side had been allotted to the share of the defendant No.2 and the defendant No.2 for his legal necessity on 02.06.1998 under registered sale deed had sold the said lands to him for a valuable sale consideration of

Rs.53,000/- and he is a bonafide purchaser of the said lands.

10. That, the defendant No.5 has further pleaded that the plaintiff had sold 03 acres of land to the said Peer Sab under registered sale deed dated:- 10.04.1996 and from the date of said purchase the said Peer Sab is in possession of the said land. That, the defendant No.5 has averred that the suit is barred by limitation. That, the defendant No.5 in view of his aforesaid contentions has prayed for dismissing the suit with casts.

11. That, the defendant No.5 has submitted his additional written statement, wherein he has pleaded that the plaintiff is no way concerned to the lands bearing Sy.No.177/1 measuring 01 acre 02 guntas and Sy.No.178/1 measuring 38 guntas.

12. That, on the basis of the pleadings of both the parties, the following issues were struck :-

ISSUES

1. Whether the plaintiff proves that, the plaint schedule properties are the Hindu undivided ancestral joint family properties of himself and the defendants No.1 to 4 ?
2. Whether the defendant No.5 proves that, the joint family properties of plaintiff and the defendant No.1 to 4 were divided between them long back ?
3. Whether the defendant No.5 proves that under the registered sale deed dated 02.06.1998 the defendant No.2 sold land bearing Sy.Nos. 177/1 and 178/1 measuring 01-02-00 acres and 38 guntas in extent respectively in his favour for his family necessities ?
4. Whether the defendant No.5 proves that he is the bonafide purchaser of land bearing Sy.No.177/1 and 178/1 measuring 01-02-00 acres and 38 guntas in extent respectively ?
5. Whether the suit of the plaintiff is barred by time ?
6. Whether the plaintiff is entitled for half share in the plaint schedule properties ?
7. Whether the plaintiff is entitled for permanent injunction as sought in the plaint ?

8. Whether the plaintiff is entitled for the reliefs prayed in the plaint ?
9. What order or decree ?

13. That, the plaintiff to demonstrate his aforesaid contentions has deposed himself as PW.1 and got marked the documents at Exs.P1 to 25 and closed his side.

That, the defendant No.5 to probabalise his aforesaid contentions has deposed himself as DW.1 and got marked the documents at Exs.D1 to 76. That, the defendant No.5 to strengthen his said contentions has got examined one Shri. Eranna S/o Sheelavantappa as DW.2 and closed his side.

14. That, I have heard the arguments and perused the materials placed on record. That, My answer to the aforesaid issues are as under :-

Issue No.1 :- In the **AFFIRMATIVE**

Issue No.2 :- In the **AFFIRMATIVE**

Issue No.3 :- In the **AFFIRMATIVE**

- Issue No.4 :- In the **AFFIRMATIVE**
Issue No.5 :- In the **AFFIRMATIVE**
Issue No.6 :- In the **NEGATIVE**
Issue No.7 :- In the **NEGATIVE**
Issue No.8 :- In the **NEGATIVE**
Issue No.9 :- As per the final order for the following :-

REASONS

15. **Issue No.1** :- That, the plaintiff has claimed that the suit properties are the ancestral and joint family properties of himself and the defendants No.1 to 4. That, the plaintiff in his chief affidavit has reiterated the said facts and got marked the documents at Exs.3 to 6, 11, to 14, 17 to 20. That, the Exs.P3 to 5 are the RTC's pertaining to the suit item No.1, wherein the name of the said original propositus – Lachama had been shown as the owner and possessor. That, the Ex.P6 is the certified copy of RTC of suit item No.1 for the relevant year 1983 to 88, wherein by deleting the name of said Lachama the name of the defendant No.3 had been entered. That, the Exs.P11 to 14 are the certified

copies of RTC's pertaining to the suit land bearing Sy. No.178/1 measuring 04 acres 05 guntas, wherein the name of the said Lachma had been entered as the owner and possessor. That, the Exs.P11 to 20 are the RTC's pertaining to the land bearing Sy.No.161/A measuring 04 acres 18 guntas, wherein the name of the said Lachma had been shown as the owner and possessor.

16. It is pertinent to note here that, the defendant No.5 in his pleadings has pleaded that the plaintiff and the defendants No.1 to 4 have got divided their joint family properties long back. That, from the pleadings of the defendant No.5 and from the Exs.P3 to 6, 11 to 14, 17 to 20 it clearly appears that the suit properties are the ancestral and joint family properties of the plaintiff and defendants No.1 to 4. Hence, without much discussion, I hold that the plaintiff has proved that, the suit properties are the ancestral and joint family

properties of himself and the defendants No.1 to 4. Hence, issue No.1 is answered in the **AFFIRMATIVE**.

17. **Issues No.2 to 4:-** That, as these issues are connected together, I have taken them for joint discussion to avoid repetition of facts. That, the plaintiff has pleaded that the suit items No.1 and 2 are standing nominally in the name of the defendants No.2 to 5 and the suit item No.3 is nominally standing in the name of the defendant No.2. It is further case of the plaintiff that, the defendant No.5 though, is no way concerned to his family and the family of the defendants No.1 to 4, but, in ROR's in respect of 01 acre 02 guntas in Sy.No.177/1 and 38 guntas in Sy.No.178/1 his name had been illegally entered. That, the plaintiff to probabalise his aforesaid contentions has got marked the documents at Exs.P1, 2, 9, 10, 16 and 25. That, the Exs.P1 and 2 are the RTC's pertaining to the suit item No.1 for the relevant year 2019 to 2021, wherein the name of the defendant No.2 has been entered to the

extent of 01 acre 16 guntas and 01 acre 02 guntas in the name of the defendant No.5. That, the Exs.P9 and 10 are the RTC's pertaining to the land bearing Sy.No.178/1 measuring 04 acres 05 guntas, for the relevant year 2018 to 2019, 2001 - 2002, wherein 07 guntas of land has been shown in the name of one Malappa, 03 acres in said Peer Sab and 38 guntas in the name of the defendant No.5.

18. That, the Exs.P16 is the RTC pertaining to the land bearing Sy.No.161/7 measuring 04 acres 18 guntas for the relevant year 2019 -2020, wherein the name of the defendant No.2 has been shown as the owner and possessor. That, the Ex.P25 is the copy of Letter addressed by one Shri. Laxman S/o Tippanna to SLAO, KIADB, Kalburagi, dated:- 06.03.2019, wherein he requested the said authority for not releasing the compensation amount in favour of anybody without his consent.

19. That, the defendant No.5 in his pleadings has pleaded that long back the plaintiff and defendants No.1 to 4 have orally got partitioned their joint family properties and in alleged partition, 03 acres in Sy.No.178/1 had been allotted to the share of the plaintiff No.1 and 01 acre 02 guntas and 38 guntas in Sy.No.178/1 have been allotted to the share of the defendant No.2 and the defendant No.2 for his legal necessity had sold the said lands to him under registered Sale deed dated:- 02.06.1998 and from the date of said purchase he is in possession of the said lands. It is further defence of the defendant No.5 that the plaintiff had sold 03 acres of land to the said Peer Sab under registered Sale deed dated:- 01.04.1996 and from the date of said purchase the said Peer Sab is in possession of the said land.

20. That, the defendant No.5 to demonstrate his said contentions has got marked the documents at Exs.D1 to 76. That, the Ex.D1 is the Sale deed dated:-

02.06.1998. That, from the recitals of the said document it appears that the defendant No.2 had sold to the defendant No.5, 01 acre 02 guntas in Sy.No.177/1 towards Western side and 38 guntas in Sy.No.178/1 towards Eastern side for a valuable sale consideration of Rs.53,000/-. That, the Exs.D2 to 24 are the RTC's pertaining to the suit item No.1, wherein the name of the defendant No.2 has been entered to the extent of 01 acre 16 guntas and 01 acre 02 guntas in the name of the defendant No.5.

21. That, the Exs.D25 to 44, 58 to 75 are the RTC's pertaining to the land bearing Sy.No.178/1 totally measuring 04 acres 05 guntas, wherein the name of Malappa has been shown to the extent of 07 guntas, in the name of said Peer Sab to the extent of 03 acres and 38 guntas in the name of the defendant No.5.

22. That, the Exs.D45 and 76 are the RTC's pertaining to the land bearing Sy.No.178/1 totally measuring 16 acres 18 guntas, wherein the name of the

Malappa has been shown to the extent of 07 guntas, in the name of the Peer Sab to the extent of 03 acres, 38 guntas in the name of the defendant No.5, 04 acres 05 guntas in the name of one Ganapati and 04 acres 04 guntas in the name of one Hanamanthraya.

23. That, the Exs.D46 to 59 are the Tax paid receipts, from which it appears that the defendant No.5 uses to pay the tax to the said lands bearing Sy.No.177/1 and 178/1. That, the Ex.D52 is the certified copy of Sale deed dated:- 10.04.1996. That, from the contents of said document it appears that the plaintiff had sold 03 acres of land in Sy.No.178/1 to the said Peer Sab for a valuable sale consideration of Rs.55,000/-.

24. That, the Ex.D53 is the certified copy of RTC pertaining to the land bearing Sy.No.178/1 totally measuring 04 acres 05 guntas for the relevant year 1978 to 83, wherein the name of said propositor Lachma had been entered as the owner and possessor. That, the Ex.D54 is the certified copy of RTC pertaining to the

land bearing Sy.No.178/1 totally measuring 04 acres 05 guntas for the relevant year 1983 to 88 wherein the name of the plaintiff had been entered as the owner and possessor. That, the Ex.D55 is the certified copy of RTC pertaining to the land bearing Sy.No.04 acres 05 guntas for the relevant year 1988 to 93, wherein the name of the Timmavva and Ayyamma have been shown as the owners and possessors. That, the Exs.D56 and 57 are the certified copies of RTC's pertaining to the land bearing Sy.No.178/1 totally measuring 04 acres 05 guntas for the relevant year 1993 to 98, wherein the names of plaintiff, defendant No.2 and Peer Sab have been shown as the owners and possessors.

25. That, the DW.2 in his chief affidavit has deposed that the defendant No.5 had purchased from the defendant No.2, 01 acre 02 guntas in the Sy.No.177/1 and 38 guntas in Sy.No.178/1 and from the date of said purchase he is in possession of the said lands.

26. It is pertinent to note here that, as stated above the defendant No.5 has specifically pleaded that long back the plaintiff and the defendants No.1 to 4 have orally got divided their joint family parties and in said partition 03 aces in Sy.No.177/1 had been allotted to the share of the plaintiff and the plaintiff for his legal necessity had sold the said land to the said Peer Sab. That, the defendant No.5 to probabalise his aforesaid contentions has mainly relied upon the Exs.D52, 25 to 44, 56 to 75.

27. It is significant to note here that, the defendant No.5 in his cross – examination though, has deposed that he was not present at the time of said oral partition and he do not know where the negotiation of alleged sale was taken place and he do not know whether the alleged transaction was reduced into writing or not but, the said Exs.D52, 25 to 44 and 56 to 75 clearly reveals that the severance in joint family and in view of said

severance the plaintiff had sold the said 03 acres of land to the said Peer Sab.

28. That, the defendant No.5 has further pleaded that in alleged partition, 01 acre 02 guntas in Sy.No.177/1 ad 38 guntas in 178/1 have been fallen to the share of the defendant No.2 and the defendant No.2 for his legal necessity had sold the said lands to him under registered sale deed and he is the bonafide purchase of the said lands. That, the defendant No.5 to probabalise his said contentions has relied upon the Exs.D1, 51 to 75.

29. It is pertinent to note here that, the plaintiff in his cross – examination dated:- 23.1.2020 in para No.04 in page No.01 has specifically admitted as under:-

ದಿಃ **02.06.1998** ರಂದು **2**ನೇ ಪ್ರತಿವಾದಿಯು ತನ್ನ
ಸಂಸಾರದ ಅಡಚಣೆಗಾಗಿ ಸರ್ವೆ ನಂ. **177/1** ರಲ್ಲಿ **1** ಎಕರೆ
2 ಗುಂಟೆ ಹಾಗೂ ಸರ್ವೆ ನಂ. **78/1** ರಲ್ಲಿ **38** ಗುಂಟೆ
ಜಮೀನನ್ನು **5**ನೇ ಪ್ರತಿವಾದಿಗೆ ಮಾರಾಟ ಮಾಡಿರುತ್ತಾರೆ

ಎಂದರೆ ಸರಿ. ಸದರಿ ಕ್ರಯ ಪತ್ರದ ಆಧಾರದ ಮೇರೆಗೆ 5ನೇ ಪ್ರತಿವಾದಿಯು ಮೇಲೆ ಹೇಳಿದ ಜಮೀನುಗಳ ಮಾಲೀಕ ಹಾಗೂ ಕಬ್ಬಾದಾರ ಎಂದರೆ ಸರಿ. ಸದರಿ ಕ್ರಯ ಪತ್ರ ಆದಾಗಿನಿಂದ ಮೇಲೆ ಹೇಳಿದ ಜಮೀನುಗಳ ಖಾತೆ ಮತ್ತು ಪಹಣಿ 5ನೇ ಪ್ರತಿವಾದಿ ಹೆಸರಿನಲ್ಲಿದೆ ಎಂದರೆ ಸರಿ.

That, the said admissions of the plaintiff are quite enough to hold that the defendant No.2 for his legal necessity had sold the said lands to the defendant No.5 and the defendant No.5 from the date of alleged purchase is in possession and enjoyment of the said lands and he is a bonafide purchase of the said lands. It is well settled law that, the an admitted facts need not to be proved. Hence, without much discussion I hold that, the defendant No.5 has successfully proved that the plaintiff and the defendants No.1 to 4 long back have

got divided their family properties and also convincingly established that the defendant No.2 for his family necessity had sold to him 01 acre 02 guntas in Sy.No.177/1 and 38 guntas in 178/1 and he is a bonafide purchase of the said properties. Hence, without much discussion, issues No.2 to 4 are answered in the **AFFIRMATIVE**.

30. **Issue No.5:-** That, the defendant No.5 has specifically pleaded that the suit is barred by limitation.

31. It is significant to note here that, as discussed above the plaintiff had admitted that the defendant No.2 had sold his said lands to the defendant No.5 and from the date of said purchase the defendant No.5 is in possession and enjoyment of the said land. It is pertinent to note here that, from the said admissions of the plaintiff it clearly appears that he is having every

knowledge of the execution and registration of the Ex.D1 – Sale deed dated:- 02.06.1998. It is significant to note here that, the plaintiff has instituted the present suit on 30.09.2019 i.e., after 21 years. That, registered sale deed constitutes constructive notice. That, the clock for limitation starts running from the date of registration, as the parties are deemed to know about the transaction. That, the plaintiff would have present suit within the period of 12 years as required under Article 59 of the Limitation Act. That, the present suit is hopelessly time barred. Hence, issue No.5 is answered in the **AFFIRMATIVE**.

32. **Issues No.6 to 8:-** That, as these issues are connected together, I have taken the for joint discussion to avoid repetition of facts. That, as discussed on above issues the plaintiff is not entitled for any relief as prayed for. Hence, issues No.6 to 8 answered in the **NEGATIVE**.

33. **Issue No.9:-** That, as discussed on issues No.1 to 8, I proceed to pass the following :-

ORDER

That, the suit of the plaintiff is dismissed.

That, no orders as to cost.

That, draw the decree accordingly.

(Directly dictated to the stenographer, typed by her, corrected by me and then pronounced in the open Court on this 07th day of March-2026)

(Hema Pastapur)
Sr. Civil Judge and JMFC,
Shahapur.

ANNEXURE

List of witnesses examined on behalf of plaintiff:-

PW.1 : Lachamanna S/o Bheemaraya @ Bhimanna
Hulkal.

List of documents marked on behalf of plaintiff:-

Exs.P.1 to 24 RTC's.
Ex.P.25 Copy of Letter.

List of witnesses examined on behalf of defendant No.5:-

DW.1 Mallappa S/o Bassappa.
DW.2 Eranna S/o Sheelavantappa.

List of documents marked on behalf of defendant No.5:-

Ex.D1 Sale deed dated:- 02.06.1998.
Exs.D2 to 45, RTC's.
53 to 76
Exs.D46 to 51 Tax paid receipts.
Ex.D52 Certified copy of Sale deed dated:-
10.04.1996.

List of witnesses examined on behalf of defendants No.1 to 4, 6 and 7:-

-Nil-

List of documents marked on behalf of defendant No.1 to 4, 6 and 7:-

-Nil-

**(Hema Pastapur)
Sr. Civil Judge and JMFC,
Shahapur.**