

KAYG210005012019



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

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

R.A. No.40/2019

Dated this 01st day of August - 2026

**Appellant/
defendant No.6:-**

Gangamma W/o Honnappa Haddi,
W/o Bojappa Jadi, Age:45 Years,
Occ: Agri. and household,
R/o: Sagar (B), Tq: Shahapur,
Dist: Yadagir. **Died by her Lrs.**

1. Mallamma W/o Late Bhimanna
Haddi, Age: 45 Years, Occ: Agri.
and household,
2. Malappa S/o Late Bhimanna
Haddi, Age: 21 Years, Occ:
Agriculture,
3. Suresh S/o Late Bhimanna Haddi,
Age: 18 Years, Occ: Student,

4. Sharanappa S/o Late Bhimanna Haddi, Age: 16 Years, (Minor) (the Lr No.4 is minor under guardianship of their natural mother Lr No.1 by name Mallamma is care and custody)
 5. Ningappa S/o Honnappa Haddi, Agi: 40 years, Occ: Agriculture,
 6. Ayyappa S/o Honnappa Haddi, Agi: 38 years, Occ: Agriculture,
 7. Sopanna S/o Honnappa Haddi, Agi: 36 years, Occ: Agriculture,
 8. Maharaj S/o Honnappa Haddi, Agi: 35 years, Occ: Agriculture,
 9. Sabamma D/o Honnappa Haddi, (W/o Mallappa) Agi: 32 years, Occ: Agri. and household,
- All are R/o village Sagar (B),
Tq: Shahapur, Dist: Yadagir.

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

Versus.

Respondents:-

1. Kavita W/o Bhimanna Sagar,

Age: 22 years, Occ: Household,
R/o: Sagar (B), Tq: Shahapur,
Dist: Yadagir. Now residing at
Tumkuru, Tq: Wadagera
(Shahapur), Dist: Yadagir.

Died by her Lrs.

- R1(a). Deepa D/o Bhimanna Sagar,
Age: 13 Years (Minor),
- R1(b). Basavaraj S/o Bhimanna Sagar,
Age:10 Years (Minor),
- R1(c). Divya D/o Bhimanna Sagar,
Age: 08 Years (Minor),
- R1(d). Bhimanna S/o Basavaraj Sagar,
Age:40 Years, Occ: Business,
(Husband of deceased Kavita)
- (The respondents No.R1 (a), (b), (c)
are minors under guardianship of
their natural father of respondent
No.1 (d) care and custody).
All Residing at village Tumkur,
Tq: Wadagera, Dist: Yadagir.

2. Lalitamma D/o Bhimanna Jadi,
Age:20 Years, Occ: Household,

3. Shashikala D/o Bhimanna Jadi,
Age:19 Years, Occ: Household,
4. Rajeshwari D/o Bhimanna Jadi,
(Minor) (Died),
5. Devindramma D/o Bhimanna
Jadi, Age: 46 Years, Occ:
Household, All R/o: Aikur,
Tq: Wadagera Dist: Yadagir.
6. Sopanna S/o Bhojappa Jadi,
Age:62 Years, Occ: Agriculture,
R/o: Sagar (B), Tq: Shahapur,
Dist: Yadagir.
7. Bhimanna S/o Bhojappa Jadi,
Died by his Lrs.
(plaintiffs No.1 to 3 and 5 are legal
heirs)
8. Chandappa S/o Sanjeevappa
Kottoru, Age: 70 Years, Occ:
Agriculture,
9. Ningamma W/o Sopanna Jadi,
Age:61 Years, Occ: Agriculture,
10. Gouramma W/o Hanamanth Jadi,
Age:40 Years, Occ: Agriculture,

11. Ayyamma W/o Hanamanth Jadi,
Age:40 Years, Occ: Agriculture &
Household, R/o: Rotanadagi,
Tq: Shahapur, Dist: Yadagir.

**(Respondents No.1 (a) to (d), 3, 5
by Sri. C.T.D. Advocate,
respondent No.6 by Sri. S.S.
Advocate, respondents No.R4 (a)
to (d) absent, respondents No.8
to 11 absent and respondent
No.7 died Lrs on record.**

Date and nature of
decree appealed : Judgment and Decree passed
in O.S.No.93/2008 dated:
20.12.2013 by the Civil Judge
and JMFC, Shahapur.

Date of institution of
the Appeal : 13.12.2019

Date of disposal : 01.08.2026

Total duration	Year/s	Month/s	Day/s
	06	07	19

J U D G M E N T

That, the Appellant – proposed defendant
No.6 on the file of the Civil Judge and JMFC,
Shahapur, has preferred this Appeal under Order

XLI Rule 1 R/W Section 96 of the Code of Civil Procedure, against the impugned Judgment dated:- 20.12.2013. That, the respondents No.1 to 5 are the plaintiffs No.1 to 5 and the respondents No.6 to 8 are the defendants No.1 to 3 and the respondents No.9 to 11 are the proposed defendants No.4, 5 and 9 therein. That, for the sake of convenience, the parties in this Appeal are referred by their ranks as assigned in the trial Court.

Suit schedule properties are as under :-

1. Land bearing Sy.No.134/3
measuring 03 acres 31
guntas.
2. Land bearing Sy.No.118/2
measuring 02 acres 36
guntas.
3. House No.8-95.
4. House No.8-69.

All are situated at Sagar (B)
village, Tq: Shahapur and Dist:
Yadgir.

Factual Matrix of the case are as under :-

1. That, the defendant No.2 is the husband of the plaintiff No.5 and father of the plaintiffs No.1 to 4. That, the defendants No.1 and 2 are the real brothers. That, the suit schedule properties are the ancestral properties of the plaintiffs and the defendants No.1 and 2 and they are in joint possession and enjoyment of the same. That, the suit item No.3 – House bearing No.8-95 was originally standing in the name of one deceased Shri Nagappa – elder brother of grand father of the defendants No.1 and 2 and the suit item No.4 – House No.8-69 was standing in the name of the father of the defendants No.1 and 2.

2. That, the defendants No.1 and 2 in order to deprive the rights of the plaintiffs over the suit properties are trying to alienate the same and without the knowledge of the plaintiffs have illegally got entered the name of the defendant

No.3 in the ROR's in respect of the suit item No.2 land bearing Sy.No.118/2. That, when the plaintiffs have demanded the defendants No.1 and 2 for allotting their legitimate share in the suit properties they have failed to heed their words. Hence, the plaintiffs have knocked the doors of justice.

3. That, on suit summons being served, the defendants No.1 to 3 have appeared before the trial Court through their learned counsel.

4. That, the defendant No.1 has submitted his written statement wherein he admitted his relationship with the plaintiffs and the defendant No.2 and denied the rest of the plaint averments. That, the defendant No.1 has pleaded that he and the defendant No.2 long back have got partitioned their properties and in alleged partition one house property had been allotted to him. That, the suit item No.2 was sold much prior to the alleged

partition. That, the plaintiffs have not impleaded his sisters by name Smt. Ningamma, Smt. Gouramma, Smt. Gangamma and Smt. Ayyamma. Hence, the suit is bad for non-joinder of necessary parties. That, the defendant No.1 in view of his aforesaid contentions has prayed for dismissing the suit with costs.

5. That, on 16.10.2008, the defendants No.2 and 3 have filed a memo for adopting the written statement submitted by the defendant No.1.

6. That, the plaintiffs subsequently have got impleaded the proposed defendants No.4 to 7. That, the proposed defendants No.4, 5 and 7 have not appeared before the trial Court and the proposed defendant No.6 appeared and submitted her written statement, wherein she admitted the description of the suit property and also admitted her relationship with the plaintiffs and other

defendants and denied rest of plaint averments. That, the proposed defendant No.6 has pleaded that the defendants No.1 and 2 long back have got divided their properties and in alleged partition one house had been allotted to the defendant No.1 and the suit item No.2 had sold much prior to alleged partition. Hence, once again the question of partition does not arise at all. That, the proposed defendant No.6 in view of her aforesaid contentions has prayed for dismissing the suit with costs.

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

1. Whether the plaintiffs proves that, suit properties are ancestral joint family properties of plaintiffs and defendant No.1 and 2 ?
2. Whether the plaintiffs further prove

that, transfer of the land in Sy.No.118/2 admeasuring 02 acres 36 guntas in the name of defendant No.3 by defendant No.1 is not binding on the plaintiffs ?

3. Whether the plaintiffs proves that, they have share in the suit property as prayed ?
4. Whether the defendant proves that, suit is hit by non- joinder of necessary party ?
5. Whether the plaintiffs are entitled to decree as prayed ?
6. What order or decree ?

Additional issues :-

1. Whether the defendant No.6 proves that, the defendant No.3 is the absolute owner in possession of

land Sy.No.118/2 as pleaded in the
para No.3 of her written
statement ?

2. Whether the defendant No.6 proves
that, there was partition took place
in between the plaintiffs and
defendants as pleaded in para No.4
of her written statement ?

8. That, the plaintiffs to demonstrate their
aforesaid contentions have got examined the
plaintiff No.5 as PW1 and have got marked the
documents at Exs.P1 to 14 and closed their side.

That, the defendant No.1 has deposed as
DW1 and has not adduced any documentary
evidence on his behalf. That, the defendant No.1 to
strengthen his said contentions has got examined
one Shri Basawaraj S/o Channappa Sajjan as
DW2 and closed his side.

That, the proposed defendant No.6 has not led either oral or documentary evidence on her behalf.

9. That, the learned trial Court considering the materials placed on record, on 20.12.2013 has partly decreed the suit with costs. That, feeling aggrieved with the said Judgment and Decree, the proposed defendant No.6 has preferred this Appeal on the following grounds that:-

- i. the Judgment and Decree passed by the trial Court is erroneous and against law.
- ii. the trial Court has not appreciated the evidence of DW1 and the defendant No.6.
- iii. the plaintiff No.5 is not entitled any share against the proposed defendant No.6 and other defendants.
- iv. the proposed defendant No.6 is the owner and possessor of the suit House bearing No.8-95. Hence, the findings given by the

trial Court on additional issues No.1 and 2 are not correct.

v. the trial Court has not appreciated the evidence on record. Hence, the said Judgment and Decree is liable to be set aside.

10. That, in this Appeal the plaintiffs No.1 to 3, 5, defendant No.1 have appeared through their learned counsel. That, as the proposed defendant No.6 died her LRs have brought on record. That, as plaintiff No.1 died her LRs have brought on record. That, the defendant No.2 died, his LRs are already on record as plaintiffs No.1 to 3 and 5. That, the LRs of the plaintiff No.1 and defendants No.3 and proposed defendants No.8 to 11 have not appeared before this Court. That, TCR has secured.

11. That, I have heard the arguments and perused the materials placed on record. That, the

following points arise for My consideration and determination:-

1) Whether the Judgment and Decree passed by the trial Court is perverse and requires interference of this Court ?

2) What order or decree ?

12. That, on careful re-evaluation of the materials placed on record, My answer to the aforesaid points are as under:-

Point No.1 :- In the **NEGATIVE.**

Point No.2 :- As per the final order for the following :-

REASONS

13. Point No.1:- That, the plaintiffs have specifically pleaded that the suit properties are the ancestral properties of themselves and the defendants No.1 and 2 and they are in joint possession and enjoyment of the same. That, the PW1 in her chief affidavit has reiterated the said

facts and got marked the documents at Exs.P1 to 14. That, the Exs.P1 and 2 are the certified copies of Namune 12 pertaining to the suit items No.3 and 4, wherein the name of the defendant No.1 had been entered as the owner and possessor. That, the Ex.P4 is the certified copy of M.R. No.447/82-23, from which it appears on the basis of the Application moved by one Shri Lingappa S/o Hayyalappa, the lands bearing Sy.No.118 and 134 have been mutated in the names of the defendants No.1 and 2. That, the Exs.P4 to 8 and 14 are the certified copies of RTC's pertaining to the suit item No.1, wherein the names of the defendants No.1 and 2 have been entered by virtue of Ex.P4.

14. That, the Exs.P9 and 10 are the certified copies of RTC's pertaining to the suit item No.2 for the relevant year 1983 to 93, wherein the names of the defendants No.1 and 2 are reflecting as the owners and possessors. That, the Exs.P11 to 13

are the RTC's pertaining to the suit item No.2 wherein the name of the defendant No.3 is reflecting as the owner and possessor.

15. That, as stated above, the plaintiffs are claiming that the suit schedule properties are the ancestral properties of themselves the defendants No.1 and 2 and whereas, the defendants No.1 to 3 and the proposed defendant No.6 have pleaded that long back the defendants No.1 and 2 have got partitioned the properties and in alleged partition the suit house had been allotted to the share of the defendant No.1 and much prior to alleged partition the suit item No.2 had been sold. It is pertinent to note here that, the defendants No.1 to 3 and proposed defendants No.6 have not specifically pleaded that when the alleged partition had taken place between the defendants No.1 and 2 and who were all present at that time and whether the same was reduced into writing or not.

It is general rule that the pleadings must be specific. That, in any absence of any specific pleading the said contentions of the said defendants do not hold water.

16. It is pertinent to note here that, the defendants No.1 in his cross-examination dated:- 28.10.2013 in page No.03 in para No.02 at 04th line has deposed that:-

ಮೌಖಿಕವಾಗಿ ಭಾಗ ಆಗಿದ್ದೇವೆ. ಆ ಸಮಯದಲ್ಲಿ
ಯಾರು ಹಾಜರಿದ್ದರು ಎಂದು ಹೇಳಲು ಬರುವುದಿಲ್ಲ.
ದಾವಾ ಆಸ್ತಿಗಳು ಯಾರ ಹೆಸರಿಗಿವೆ ಎಂದು ನನಗೆ
ಗೊತ್ತಿಲ್ಲ. ಭಾಗದಂತೆ ನನ್ನ ತಮ್ಮನ ಹೆಸರಿಗೆ ಖಾತೆ
ಆಗಿದೆ. ನಮ್ಮ ತಮ್ಮನ ಹೆಸರಿಗೆ ಖಾತೆ ಆದ ಬಗ್ಗೆ
ದಾಖಲೆ ಕೊಟ್ಟಿಲ್ಲ.

17. It is pertinent to note here that, the PW1 in his cross-examination dated:- 28.10.2013 in page No.03 in para No.01 at 07th line has deposed that:-

ಎಷ್ಟು ವರ್ಷದಿಂದ ಯಾವ ಹೊಲ ಮಾರಾಟ
ಮಾಡಿದ್ದೇವೆ ಏತಕ್ಕೆ ಮಾರಿದ್ದೇವೆ ಎಂದು ಗೊತ್ತಿಲ್ಲ.

It is significant to note here that, from the said evidence of the defendant No.1 it clearly appears that partition had not taken place between the defendants No.1 and 2 they have not sold any suit land to the defendant No.3.

18. It is pertinent to note here that, the defendant No.1 in his cross – examination dated:- 28.10.2013 in para No.3 at 03rd line has specifically deposed that he is not ready to give the share to the plaintiffs in the suit schedule properties. That, from the said evidence of the defendant No.1 it clearly appears that to deprive the rights of the plaintiffs over the suit properties it has falsely alleged that the alleged partition had taken place and suit item No.2 had been sold much prior to alleged partition.

19. That, defendant No.1 and DW2 in their cross- examination have specifically deposed that the suit properties are the ancestral properties.

20. That, the trial Court has rightly allotted the share to the plaintiffs in respect of the suit items No.1, 3 and 4. That, there is no substance in the grievance venditcted by the defendant No.6. Accordingly, point No.1 is answered in the **NEGATIVE.**

22. Point No.2:- That, as discussed on point No.1, I proceed to pass the following :-

ORDER

That, the appeal filed by the Appellant – proposed defendant No.6 under Order XLI Rule 1 R/W Section 96 of the Code of Civil Procedure, is dismissed.

That, no orders as to cost.

That, the Judgment and Decree passed by the trial Court in O.S. No.93/2008 dated:- 20.12.2013 is upheld.

That, draw the decree accordingly.

That, the office is to re-transmit the trial Court records forthwith along with copy of this order.

(Directly dictated to the stenographer, typed by him, corrected by me and then pronounced in the open Court on this 01st day of August-2026)

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