

KAYG210013042024



**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.37/2024

Dated this 06th day of July -2026

**Appellant/
Plaintiff:-**

Sharanappa S/o Peerappa Pujari,
Age: 58 years, Occ: Agriculture,
R/o: Rajapur (B), Tq: Shahapur,
Dist: Yadgir.

(By Sri. S.S. Advocate)

Versus.

**Respondents/
Defendants:-**

Mallappa S/o Peerappa Pujari (died)
LRs of Mallappa is brought on record.

1. Nagamma W/o late Mallappa Pujari,
Age: 52 years, Occ: Household,
2. Peerappa S/o late Mallappa Pujari,
Age: 37 years, Occ: Agriculture,

3. Devappa S/o late Mallappa Pujari,
Age: 35 years, Occ: Agriculture,
4. Neelkanta S/o late Mallappa Pujari,
Age: 33 years, Occ: Agriculture,
5. Maremma D/o late Mallappa Pujari,
Age: 30 years, Occ: Household,
6. Adgalappa S/o late Mallappa Pujari,
Age: 28 years, Occ: Agriculture,
7. Mounesh S/o late Mallappa Pujari,
Age: 26 years, Occ: Agriculture,
8. Revansiddappa S/o late Mallappa Pujari,
Age: 24 years, Occ: Agriculture,
9. Bhimashankar S/o late Mallappa Pujari,
Age: 22 years, Occ: Agriculture,
All are R/o: Rajapur (B), Tq: Shahapur,
Dist: Yadgir.

**(Respondents No.1, 2, 6, 7 and 9 are by
Sri.S.A. Advocate and respondents
No.3 to 5 and 8 are exparte)**

Date and nature of : Judgment and Decree passed in
decree appealed O.S.No.155/2016 dated: 20.06.2024
by the Prl. Civil Judge and JMFC,
Shahapur.

Date of institution of : 06.08.2024
the Appeal

Date of disposal : 06.07.2026

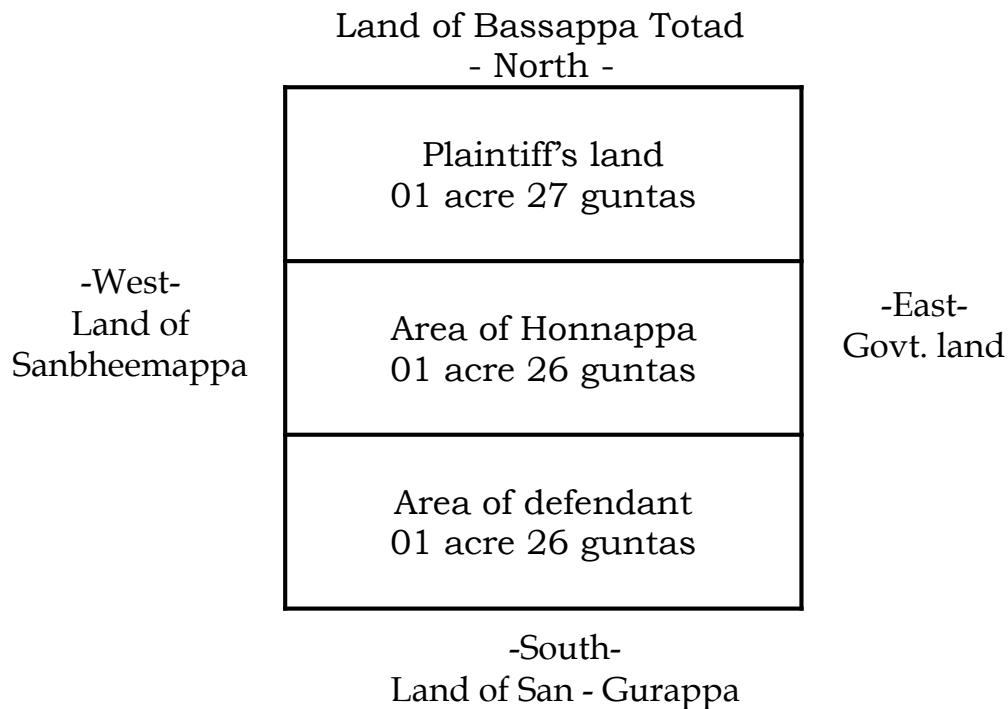
Total duration	Year/s	Month/s	Day/s
	01	11	--

JUDGMENT

That, the Appellant - Plaintiff in O.S.No. 155/2016 on the file of the Prl. Civil Judge and JMFC, Shahapur, has preferred this Appeal under Order XLI Rule 1 and 2 R/W Section 96 of the Code of Civil Procedure, against the impugned Judgment dated:- 20.06.2024. That, the respondents are the defendants 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 property is as under :-

Land bearing Sy.No.66/8
measuring 01 acre 27 guntas
Northern side, situated at Rajapur
(B) village, Tq: Shahapur, bounded
as under :-

**Factual Matrix of the case are as under :-**

1. That, one deceased Shri Peerappa had got three sons by name Shri Mallappa – defendant, Shri Honnappa and Shri Sharanappa – plaintiff. That, the suit land bearing Sy.No.66/8 was totally measuring

05 acres 04 guntas, out of which 05 guntas is phot kharab. That, the said property is the ancestral property of the plaintiff and defendant. That, the plaintiff, defendant and their another brother – Honnappa have got divided the said suit land and in alleged partition, 01 acre 27 guntas towards Northern side had been allotted to the share of the plaintiff and 01 acre 26 guntas towards Southern side had been allotted to the share of the defendant and middle portion of 01 acre 26 guntas had been allotted to the share of the said Honnappa. That, in alleged partition, the plaintiff had also got a plot bearing No.244/2 measuring 60X65 feet. That, the plaintiff, defendant and the said Honnappa though, have got entered their names in the records, but, in the ROR's the areas have not been mentioned separately.

2. That, as the defendant was interfering in the possession of the said Honnappa pertaining to his plot bearing No.244/1, the said Honnappa had

instituted the suit in O.S. No.68/2005 against him and the Court had decreed the said suit. That, as the plaintiff had supported the said Honnappa in the said suit, the defendant with a malafide intention is trying to dispossession the plaintiff from the suit land. Hence, the plaintiff has knocked the doors of the justice.

3. That, on suit summons being served, the defendant appeared before the trial Court through his learned counsel and submitted his written statement, wherein he admitted his relationship with the plaintiff and also admitted the description of the suit property and denied the rest of plaint averments. That, the defendant has pleaded that the suit land bearing Sy.No.66/8 was totally measuring 05 acres 34 guntas and out of which 05 guntas is phot kharab and the said property is the ancestral property of himself and the plaintiff.

4. That, the defendant has further averred, he and his brothers – plaintiff and the Honnappa have jointly got transferred the 04 acres 39 guntas of land and one old House bearing No.2-73 is standing in his name and the same is in dilapidated condition and the House bearing panchayath No.3-27 is standing in the name of the said Honnappa and House bearing panchayath No.3-27/1 is standing in his name and another House panchayath bearing No.3-28 is standing in the name of the plaintiff. That, the defendant has further pleaded that partition has not taken place between him and his said brothers in the said properties. Hence, the defendant in view of his aforesaid contentions has prayed for dismissing the suit with cost.

5. That, as the defendant died his LR's brought on record as the defendants No.1 to 9.

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

1. Whether the plaintiff proves that, he is the owner and possessor of land Sy.No.66/8 to the extent of 01 acre 27 guntas of northern side situated at Rajapur village ?
2. Whether the plaintiff is entitled for the relief of declaration and injunction ?
3. To what order or decree ?

7. That, the plaintiff to prove his case has deposed himself as PW1 and got marked the documents at Exs.P1 to 4. That, the plaintiff to strengthen his said contentions has got examined his brother Shri Hoannappa as PW2 and closed his side.

That, the defendants to probabalise their said contentions have got examined the defendant No.1- Smt. Nagamma W/o Mallappa as DW1 and have not adduced any documentary evidence on their behalf and closed their side.

8. That, the learned trial Court considering the materials placed on record, on 20.06.2024 has dismissed the suit. That, feeling aggrieved with the said Judgment and Decree, the plaintiff has preferred this Appeal on the following grounds that:-

- i. the Judgment and Decree passed by the trial Court is erroneous and against the law.
- ii. the trial Court has not framed the proper issues arising out of the pleadings of both the parties.
- iii. the trial Court has not appreciated the documents got marked by the plaintiff.
- iv. the findings given by the trial Court on all the issues is not correct.
- v. the DW1 though, has given admission about alleged partition but, the trial Court has not considered the same.
- vi. the Exs.P2 and 3 reveals about the partition took place between the parties in their ancestral

properties, the trial Court has not considered the same.

vii. the defendants have not adduced any documentary evidence to prove their case. That, the trial Court has not properly considered the oral and documentary evidence adduced by the plaintiff, which has led into miscarriage of justice. Hence, the said Judgment and Decree is liable to be set aside.

9. That, in this Appeal the defendants No.1, 2, 6, 7 and 9 have appeared through their learned counsel and the defendants No.3 to 5 and 8 have remained absent. That, TCR has secured.

10. 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 erroneous and requires interference of this Court ?

2. What order or decree ?

11. 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

12. Point No.1:- It is specific case of the plaintiff that, in alleged partition the suit property had been allotted to him. That, the PW2 has also supported the case of the plaintiff. That, the plaintiff has mainly relied upon the Exs.P1 to 4. That, the Exs.P1 and 4 are the RTC's pertaining to the suit land bearing Sy.No.66/8 totally measuring 05 acres 04 guntas (05 guntas phot kharab) for the relevant year 2015-16 and 2017-18, wherein the name of the plaintiff, defendant and the Honnappa are reflecting jointly. That, the Ex.P2 is the certified copy of Judgment passed in O.S. No.68/2005 dated:- 02.01.2006, on the board of the

Civil Judge, Shahapur. That, the said Honnappa - PW2 had instituted the said suit against the present deceased defendant Mallappa and the said Court had decreed the said suit. That, the Ex.P3 is the certified copy of Decree passed in Ex.P2.

13. That, the defendant has pleaded that, partition had not taken place between him, the plaintiff and said Honnappa in respect of their properties and they are in joint possession and enjoyment of the same.

14. It is pertinent to note here that, as stated above, the plaintiff has specifically pleaded that the partition had taken place between him and his said brothers – Mallappa – defendant and the said Honnappa – PW2 and in alleged partition the suit land one plot had been allotted to him. That, the plaintiff has further specifically pleaded that though, the alleged partition had taken place but, in the ROR's shares have not been mentioned separately. It is well settled law that, whoever desires the Court to give the Judgment on

any fact then the burden lies upon him to prove the existence of said fact. That, the plaintiff though, had pleaded about the alleged partition, but, has not specifically pleaded that when the alleged partition had taken place and who were all present at that time and whether the same was reduced into writing or not and whether it was acted upon or not. That, the whole objective behind pleading is to narrow down the issues and provide a clear picture of the case, thereby enhancing and expediting the Court proceedings. That, the pleadings help both the parties know their point of dispute and where both the parties differ, so as to bring forth the relevant arguments and evidence in the Court of law. Without pleadings, a trial would be chaotic. Neither the Court nor the parties would know exactly what is being disputed. Pleadings bring and structure to a civil suit. Hence, in the absence of any specific pleading the said contention of the plaintiff do not assume any importance.

15. That, the PW1 in his cross – examination dated:-
06.10.2023 in page No.01 in para No.01 at 04th line
and in para No.02 at 02nd line has admitted as under:-

04th line:-

ಸರ್ವೆ ನಂ.66/8 ನನ್ನ ಹಿರಿಯರ ಆಸ್ತಿ ಎಂದರೆ
ಸರಿ. ನನ್ನ ತಂದೆ ಮೃತ ಪಟ್ಟ ನಂತರ ನನ್ನ ಹೆಸರಿಗೆ,
ಮಲ್ಲಪ್ಪ ಹೆಸರಿಗೆ, ಹೊನ್ನಪ್ಪ ಹೆಸರಿಗೆ ಜಂಟಿಯಾಗಿ ಇದೆ
ಎಂದರೆ ಸರಿ.

02nd line:-

ನಾನು, ಮಲ್ಲಪ್ಪ, ಹೊನ್ನಪ್ಪ ಮದುವೆ ನಂತರ
ನಮ್ಮ ಕುಟುಂಬ ಜೊತೆಯಲ್ಲಿ ಬೇರೆ ಬೇರೆಯಾಗಿ
ವಾಸವಾಗಿದ್ದೇವೆ ಎಂದರೆ ಸರಿ.

It is significant to note here that,
from the said admissions of the plaintiff it
clearly appears the partition had not taken
place between him and his said brothers in
the suit property and they are in joint
possession of the same. That, the said
admissions of the plaintiff has strengthened
the case of the defendants.

16. That, the PW2 in his cross – examination dated:-
15.12.2023 in page No.03 in para No.02 at 03rd line
has deposited that :-

ದಾವಾ ಆಸ್ತಿ ಸರ್ವೆ ನಂ.66/8 ವಿಸ್ತರಣೆ 4
ಎಕರೆ 36 ಗುಂಟಾ ನಮ್ಮ ಮೂರು ಜನ ಅಣ್ಣ
ತಮ್ಮಂದಿರ ಹೆಸರಿಲ್ಲಿ ಇರುತ್ತದೆ ಎಂದರೆ ಸರಿ, ಪಾಲು
ಬೇಕು ಎಂದು ದಾವಾ ಹಾಕಿರುತ್ತೇವೆ.

That, the said admission of the PW2
clarifies that he and his brothers are in joint
possession of the suit land.

17. That, the plaintiff has mainly relied upon the
admissions given by the DW1. That, for the sake of
convenience, the said evidence of the DW1 has
reiterated as under:-

Dated:- 12.01.2024 in page No.04 at 02nd line:-

ದಾವಾ ಆಸ್ತಿಯು ಮೂರು ಜನ ಅಣ್ಣ ತಮ್ಮಂದಿರ
ಹೆಸರಿಲ್ಲಿ ಜಂಟಿಯಾಗಿದೆ ಎಂದರೆ ಸರಿ. ನನ್ನ ಗಂಡ
ಇರುವಾಗಲೇ ಮೂರು ಜನ ಅಣ್ಣ ತಮ್ಮಂದಿರು ಬೇರೆ

ಆಗಿರುತ್ತಾರೆ ಎಂದರೆ ಸಾಕ್ಷಿಯು ಬೇರೆ ಆಗಿರುತ್ತಾರೆ ಆದರೆ
ಹೊಲ ಪಾಲು ಆಗಿರುವುದಿಲ್ಲ ಎಂದು ನುಡಿದಿರುತ್ತಾರೆ.
ದಾವಾ ಆಸ್ತಿಯನ್ನು ಮೂರು ಜನ ಅಣ್ಣತಮ್ಮಂದಿರು
ಸಮನಾಗಿ ಹಂಚಿಕೊಂಡಿರುತ್ತಾರೆ ಎಂದರೆ ಸರಿ. ದಾವಾ
ಆಸ್ತಿಯಲ್ಲಿ ಮೂರು ಪಟ್ಟಿ ಇರುತ್ತವೆ ಎಂದರೆ ಸರಿ.

It is pertinent to note here that, from
the said evidence of DW1 it clearly appears
that the parties have not got divided the
suit land and they are in joint possession of
the same. That, the plaintiff has not
produced any document to show that the
suit property has divided into three strips.
That, the stray admission of the DW1 will
not come to the aid of the plaintiff.

18. That, the plaintiff has further mainly relied upon
the Exs.P2 and 3. It is significant to note here that,
the said Honnappa – PW2 had instituted the suit in

O.S. No.68/2005 – Ex.P2 for Perpetual injunction against the present deceased defendant, in respect of the open plot panchayath bearing No.244/1 measuring East – West – 60 feet and North – South – 65 feet. That, in the said suit the said Honnappa – PW2 had pleaded that the partition had taken place between him and his brothers. It is to be noted here that, the plaintiff is a not a party to the said suit. It is significant to note here that, an injunction only decides who has possession of the property at a given time; it does not legally determine legal ownership or title. Hence, the Exs.P2 and 3 will not come to the aid of the plaintiff.

19. That, the plaintiff with all preponderance of probabilities has failed to demonstrate about the alleged partition. Hence, he is not entitled for the reliefs claimed. That, there is no substance in the grievance vendicted by the plaintiff. Accordingly, point No.1 is answered in the **NEGATIVE**.

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

ORDER

That, the appeal filed by the Appellant
- Plaintiff under Order XLI Rule 1 and 2 R/W
96 of the Code of Civil Procedure, is
dismissed.

That, the Judgment and Decree passed
by the trial Court in O.S.No.155/2016
dated:- 20.06.2024 is upheld.

That, no orders as to cost.

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 06th day of July-2026)

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