



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

**: PRESENT :**

**SMT. FAKIRAWWA KELAGERI, B.A.,LL.B.,**  
Senior Civil Judge and JMFC, Shorapur.

**O.S No.111/2022**

**Dated this the 10<sup>th</sup> day of March, 2026**

**Plaintiff/s** Mahalaxmi W/o Shankargouda (D/o Late Sharanappa) Gurikar, Age: 28 years, Occ: House hold and Agri, R/o Bailkunti, Tq: Hunasagi, Dist: Yadgiri.

**(By Sri.D.T.B., Adv.,)**

**V/s**

**Defendant/s:** 1 Bassamma W/o Ningappa (D/o Late Sharanappa) Dori, Age: 45 years, Occ: House hold and agri, R/o Bailkunti, Tq: Hunsagi, Dist: Yadgiri.

2 Shridevi W/o Yenkananna (D/o Sharnappa) Kalyani, Age: 43 years, Occ: Agri, R/o Bailkunti, Tq: Hunsagi, Dist: Yadgiri.

3 Shivamma W/o Bassappa (D/o Late Sharnappa) Sukla, Age: 40 years, Occ: Agri, R/o Bailkunti, Tq: Hunasagi, Dist: Yadgiri.

4 Basavanthraya S/o Late Sharnappa Telginmani, Age: 32 years, Occ: Agri, R/o Bailkunti, Tq: Hunasagi, Dist: Yadgiri.

5 Parusharam S/o Late Sharnappa Telginmani, Age: 30 years, Occ: Agri, R/o Bailkunti, Tq: Hunasagi, Dist: Yadgiri.

6 Awwamma W/o Mudkappa (D/o Late Sharnappa), Age: 28 years, Occ: Agri, R/o Koihal, Tq: Hunasagi, Dist: Yadgiri.

7 Annapurna W/o Sabanna (D/o Late Sharnappa) Salwadgi, Age: 26 years, Occ: Agri, R/o Bailkunti, Tq: Hunsagi, Dist: Yadgiri.

8 Muttappa S/o Late Sharnappa Telginmani, Age: 20 years, Occ: Agri, R/o Bailkunti, Tq: Hunasagi, Dist: Yadgiri.

9 Parusharam S/o Hulgappa Doddamani, Age: 27 years, Occ: Agri, R/o Bailkunti, Tq: Hunsagi, Dist: Yadgiri.

**(D1 to 2 By Sri. S.V.N., Adv.,)**  
**(D9 By Sri. M.H., Adv.,)**

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|-------------------------------------|---|--|
| 1. Date of institution              | : | 21.04.2022   |
| 2. Nature of the suit               | : | Partition and Separate Possession with declaration |
| 3. Date of commencement of Evidence | : | 24.02.2023   |
| 4. Date of judgment                 | : | 10.03.2026   |
| 5. <b>Duration</b>                  |   | Year/s    Month/s    Day/s                         |
|                                     |   | 03            10            17                     |

### **J U D G M E N T**

This is a suit filed by the plaintiff for a relief of partition and separate possession with declaration against defendants.

#### **2. The factual matrix in the nutshell is as under;**

It is epitome case of the plaintiff that, himself and defendant No.1 to 8 are the joint family members and they are

Governed by Mithakshara School of law, and the suit schedule properties annexed to this plaint are the ancestral joint family properties of plaintiff and defendant No.1 to 8. The defendant No.9 is no where concerned to the family of the plaintiff and defendants No.1 to 8. The plaintiff is the younger sister of defendants No.1 to 7 and elder sister of defendant No.8. The plaintiff and defendants are the daughters and sons of late Sharanappa. The suit schedule properties are the ancestral joint family properties of the plaintiff and defendant No.1 to 8 from their ancestors. The suit schedule properties previously stands in the names of ancestors. After demise of ancestors they have been mutated in the names of father of plaintiff and mother Gangawwa. After the death of father of plaintiff namely Sharnappa, the defendant No.4 has get entries his their names as elders male member of joint family without any family settlement and also the defendant No.5 and 8 names also entered, therefore their names are finding place in the ROR of the suit properties.

**3.** It is further stated that, the plaintiff heard the news in the village that, one of the ancestral property of the plaintiff was sold by the defendant No.4 to the defendant No.9. Due to which the plaintiff met with the defendant No.1 to 8 at village

Bailkunti and questioned them why you sold the their ancestral land without giving her definite 1/9th share in the suit properties. But, the defendant No.1 to 3 and 5 to 8 have said that they have also no knowledge about the alienation and the defendant No.4 has sold the land Sy.No.62 adm. 06 acres 25 guntas to the defendant No.9 without any family and legal necessity. Because the family of plaintiff and defendant No.1 to 8 are the affiliate family, there is no any debt or liability, therefore the plaintiff has asked her definite 1/9th share in the suit schedule properties. But, the defendant No.4 has denied the share of the plaintiff and effect the partition in the suit schedule properties at village Bailkunti on 01.04.2022. Therefore, the plaintiff is put-forth the matter before the elders of the village and elders of the village have called the defendant No.4, 5, 8 and they have suggested that, the plaintiff is having her definite share in the suit properties. Therefore you are all allot the share of plaintiff. But, the defendant No.4, 5 and 8 have not heeded the words of the elders of village. Hence filed this suit.

**4.** After filing of suit, suit summons was issued to the defendants. In pursuance of same the defendant No.1 to 9 tendered their appearance before court through their

respective counsels. The defendant No.9 has filed the written statement and denied the entire plaint averments. In his further plea he has contended that, the defendant No.9 is the bonafide purchaser of suit schedule property item No.3 bearing Sy.No.62/3 adm. 06 acre 25 gunta situated at village Bailkunti, Tq: Shorapur. The defendant No.9 has purchased the same from the defendant No.4 through a registered sale deed dated 21.10.2019 with the consent of all the family members including plaintiff. The defendant No.4 being the karta of joint family for his family and legal necessity i.e., for clearing the family debt which was taken from various persons at the time of performing the marriages of his sisters has sold the suit schedule property item No.3. The plaintiff is well aware about all these facts including sale transaction. The suit is bad for non-joinder of necessary party ad properties. The plaintiff has not include all the joint family properties and the plaintiff has not made party to the other purchasers of joint family properties. The plaintiff has not included the property bearing Sy.No.62/2 and 62/Aa and the plaintiff has not made party to the purchasers by name Parasappa S/o Halwappa and Bhimanna S/o Saibanna Budihal. Hence prays to dismissed the suit with cost.

5. On the basis of the above rival contentions the following issues were framed by my Learned Predecessor:

**ISSUES**

1. Whether the plaintiff proves that, suit schedule properties are the ancestral and joint family properties of the plaintiff and defendant No.1 to 8 and plaintiff and defendants are joint family members?
2. Whether plaintiff is entitled 1/9th share in the suit schedule properties?
3. Whether the defendant No.9 proves that, the defendant No.4 has sold suit item No.3 property for his family and legal necessity and he has a bonafied purchaser?
4. Whether suit is bad for non-joinder of necessary party and property?
5. What order or decree?

6. In order to prove her case, the plaintiff herself has been examined as PW.1 and got examined two witnesses as PW2 and 3 and got marked 10 documents as per Ex.P1 to Ex.P.10. On the other hand, the defendant No.9 himself has been examined as DW1 and got marked 19 documents as Ex.D.1 to 19.

**7.** Heard the arguments of both the sides at length and perused the oral and documentary evidence available on record.

**8.** On considering the materials placed before, my findings on the above issues are as under :-

Issue No.1 - In the Partly Affirmative  
Issue No.2 - In the Affirmative  
Issue No.3 - In the Affirmative  
Issue No.4 - In the Affirmative  
Issue No.5 - As per final order for the  
Following;

### **REASONS**

**9. Issue No.1 to 3:** As these issues are interrelated to each other, involve common appreciation of facts and evidence and record, findings on one issue are bearing on other issues, hence in order to avoid repetition of facts and convenience share, these issues are taken together for common discussion.

**10.** Pedigree or genealogy of family of plaintiff and defendants is mentioned at para No.3 of plaint that the plaintiff is the younger sister of defendant No. 1 to 7 and elder sister of defendant No.8. The plaintiff and defendant No.1 to 8 are the daughters and sons of late Sharanapa. The contesting defendant No.9 in his written statement in Para No.3 and 4

contended that the plaintiff has not given the family pedigree and the plaintiff has not given the date of death of her father and also not mentioned the name of her mother whether she dead or alive also not clarified. On perusal of plaint averments, it appears that the plaintiff has not shown the genealogy of father of plaintiff by name Sharanappa.

**11.** While cross examining plaintiff, at Page No.1 has stated that her father had 3 sons and 6 daughters. Though the plaintiff has not shown the genealogy in the plaint, but in the cross-examination, she has clearly stated that her father had three sons and six daughters. Learned counsel for defendant No.9 has not clarified with regard to name of mother of plaintiff and date of death of father of plaintiff and defendant No. 1 to 8. When the defendant No.9 taken such contention, he has to say the correct genealogy of plaintiff and defendant No.1 to 8. Here in the case, the defendant No.9 has not stated correct genealogy. In the cross-examination PW1 and DW1 have admitted that mother and father of plaintiff died about 5 years back and 3 years back. The defendant No.1 to 8 who are competent persons to say correct genealogy have not appeared before court and contested the case. Looking into material placed on record and oral evidence of parties, it can

be held that, the relationship of plaintiff and defendant No.1 to 8 as mentioned in the plaint at para No.2 is correct.

**12.** It is definite case of plaintiff that herself and defendant No. 1 to 8 are the joint family members and they are governed by Mithakshara School of Hindu Law and the suit schedule properties are ancestral and joint family properties of plaintiff and dependent No.1 to 8. The defendant No.9 is nowhere concerned to the family of plaintiff and defendant No.1 to 8.

**13.** The contesting defendant No.9 has taken specific contention that the suit property Item No.3 is not the ancestral and joint property of plaintiff and defendant No.1 to 8 as on the date of filing suit. As on the date of filing suit the defendant No.9 is the absolute owner and possessor of suit for Item No.3 property.

**14.** In order to substantiate her case, the plaintiff herself examined as PW-1 reiterated the plaint averments as to mode of acquisition of properties and possession with defendants and produced 10 documents as per Ex.P1 to 10. Ex.P1 to 5 are the record of right , Ex.P6 is the copy of

registered sale deed, Ex.P7 is the record of right, Ex.P8 to 10 are the mutation extracts.

**15.** In order to prove their contention the defendant No.9 himself examined as DW-1 and reiterated the written statement averments and got marked 19 document as Ex.D.1 to 19. Ex.D.1 is the registered sale deed, Ex.D2 to 6 are the the record of right, Ex.D7 to 10 are the complaint copies, Ex.D11 is the certified copy of registered sale deed, Ex.D12 to 15 are the record of right and Ex.D16 to 19 are the copies of registered sale deeds.

**16.** It is pertinent to here that there is no dispute with regard to mode of acquisition of suit item No.1 and 2 properties and there is a serious dispute with regard to suit item No.3 property. Herein the case, the plaintiff has stated that there is no partition taken place in between plaintiff and defendant No.1 to 8 in suit properties. The defendant No.9 has taken contention that as per the information issued from the defendants there was a family settlement and accordingly the names of defendant No.4, 5 and 6 have been entered in the record of right of suit properties. Now point for consideration is whether the family settlement took place in between plaintiff and defendant No.1 to 8 and whether the defendant No.4 has

sold suit item No.3 property for his family and legal necessity or not has to be looked into.

**17.** PW2 and 3 Viz.,Gopalappa S/o Bhimaraya and Hanumagouda S/o Amarappagouda. Police Patil have been examined before court in support of case of plaintiff. They deposed that the family of plaintiff and defendant No.1 to 8 is the joint family and they have not partitioned and they are cultivating the same jointly.

**18.** At this stage, it is necessary to refer the documents produced by the couple parties. As per record of right for the year 2016-17 to 2021-22 pertains to Sy.No.66/೨-3, it appears that, the name of defendant No.5 has been entered to an extent of 2 acre 22 guntas based on MR.No.H11/2015-16 by virtue of relinquishment dated 09.06.2016 as per Ex.P.1.

**19.** As per record of right of the year 2016-17, 2017-18 pertains to Sy.No.20/೨, it appears that the name of defendant No.4, 5 and 8 have been jointly entered to an extent of 11 acre 17 guntas as per MR.No.T69/215-16 dated 13.03.2016 as per Ex.P2 and 3.

**20.** As per record of right of the year 2018-19, 2019-20 and 2020-21 pertains to Sy.No.20/೨, it appears that the name

of defendant No.4, 5 and 8 have been jointly mentioned to an extent of 11 acre 17 guntas as per MR.No.T69/215-16 dated 13.03.2016. Further indicates that the name of one Shivappa S/o Ningappa Telaginamani is mentioned to an extent of 3 acre 6 guntas and Basalingappa S/o Ningappa Telaginmani is mentioned to an extent of 3 acre 6 guntas respectively. Further indicates that the name of defendant No.5 is mentioned to an extent of 11 acres 17 guntas in owners column and name of defendant No.5 and 8 have been mentioned in cultivators column. The same is continued up to 2021-22 as per Ex.P4.

**21.** As per record of right of the year 2016-17, pertains to Sy.No.62/3, it appears that the name of defendant No.4 has been entered to an extent of 06 acre 14 guntas by way of relinquishment as per MR.No.H12/2015-16 dated 09.06.2016 as per Ex.P5 and Ex.D2.

**22.** Ex.P,10 is MR.No.H6/2014-15. On perusal of the same it appears that the mother of plaintiff relinquished her right in favour of defendant No.4 in respect of suit item No.3 property. The same is certified on 09.06.2016.

**23.** No doubt, there is no iota of evidence before court to show that suit item No.1 and 2 properties are ancestral

properties of plaintiff and defendants. On careful perusal of oral as well as documentary evidence, it appears that the record of right pertains to suit item No.1 property is standing in the name of defendant No.5. The suit item No.2 property is jointly standing in the name of defendant No.4, 5 and 8. It is pertinent to note here that the defendant No.1 to 8 have not contested the matter. The non-contesting of suit by the defendant No.1 to 8 before the court even after suit summons, and adverse inference can be drawn against them. Under such circumstances the suit item No.1 and 2 properties are ancestral and joint family properties of plaintiff and defendant No.1 to 8.

**24.** Insofar as suit item No.3 property is concerned, the record of right pertains to said property is earlier standing in the name of father of plaintiff and defendant No.1 to 8 namely Sharanappa as per ExD.12. After death of Sharanappa, the name of defendant No.4 has been entered said party. The documentary evidence clearly goes to show the suit item No.3 property is ancestral property of plaintiff and defendant No.1 to 8. Now points for consideration is whether the defendant No.4 was having alienable right over suit item No.3 property or not has to be looked into.

**25.** It is pleaded and the same is deposed by PW-1 before court that she had no knowledge about the alienation of suit property i.e., Item No.3 in favour of defendant No.9 and the sale deed is null and void and not binding upon her. The family of plaintiff and defendant No.1 to 8 is affiliate family having no family debt and liability. The contesting defendant No.9 has taken specific contention that he has purchased the suit property from the defendant No.4 through registered sale deal on 21.10.2019 with the consent of all the family members including Plaintiff. The defendant No.4 being kartha of joint family for his family and legal necessity i.e. for cleaning the family debt which was taken from various persons at the time of performing the marriages of his sisters has sold the suit item No.3 property. The plaintiff is well aware about all these facts, including said transaction.

**26.** PW2 and 3 have stated that, the father of plaintiff was performed the marriage of plaintiff and other defendants and sons without any loan or liability.

**27.** During the course of argument Ld counsel for defendant No.9 relied upon rulings in **(1998) AIHC 1881** in between **Rajmani Patel V/s Mohan Lal**, wherein the Hon'ble High court of Madhya Pradesh held that, joint family property

alienation by karta legal necessity a sale deed executed by the karta of a joint Hindu family is binding on other members only if it is for legal necessity.

**28.** Ex.P6 and Ex.D1 are certified copy and original sale deed dated 18.10.2019. On perusal of the same it appears that the defendant No.4 has executed registered sale deed in favour of defendant No.9 in respect of suit item No.3 property.

**29.** Ex.P9 is MR.No.H12/2015-16. On perusal of the same it appears that the defendant No.5 and 8 relinquished their right in favour of defendant No.9 in respect of suit item No.3 property. The same is certified on 09.06.2016

**30.** Ex.P8 is MR.No.H5/2019-20. On perusal of the same it appears that based on registered sale deed dated 18.10.2019, the name of defendant No.9 mutated to suit item No.3 property. The same is certified on 22.11.2019. ExD.2 discloses that based sale deed and mutation in the year 2019-20 the name of defendant No.9 has been entered to an extent of 06 acre 14 guntas as per MR.No.H5/2019-20 dated 22.11.2019 by virtue of registered sale deed.

**31.** When cross examining PW1, by counsel for defendant No.9 has stated that earlier Sy.No.62 was standing

in the name of her mother. She admits that during the lifetime of her mother the defendant No.4 got entry in his name in respect of said property. It is suggested to PW1 that in order to clear debt, the mother of plaintiff had relinquished her right in favour of defendant No.4. The said suggestion is denied by the witness. Further, it is suggested to PW1 that in family settlement herself and her sisters relinquished their right in favour of defendant No.4 and they have relinquished their right in respect of Item No.2 property in favour of defendant No.5 and 8 through oral settlement and accordingly their names have been entered in the record of right. The said suggestion is denied by the witness.

**32.** In cross-examination, PW1 has stated she does not know that in the year 2016, they have relinquished their right in the oral settlement. She denied that as per will and wish of her mother the defendant No.4 has sold the suit Item No.3 property in favour of defendant No.9 for clearing the family debt which was raised for performing the marriages of her and her sister. She denied that still the said debt is mentioned in the record of right. PW-3 stated that after death of Sharnappa the defendant No.4 himself made debt.

**33.** PW-2 admits that, after death of his father, he was managing the joint family as kartha. PW-3 stated that the defendant No.4 is manager of joint family.

**34.** Further PW-2 has deposed that, 6 ಮತ್ತು 7 ನೇ ಪ್ರತಿವಾದಿಯರ ಮದುವೆ ಯಾವಾಗ ಆಗಿರುತ್ತದೆ ಅಂತ ನನಗೆ ಗೊತ್ತಿರುವುದಿಲ್ಲ, ಅಂದಾಜು ಎಷ್ಟು ವರ್ಷಗಳ ಹಿಂದೆ ಮದುವೆಯಾಗಿರುತ್ತದೆ ಎಂದು ನನಗೆ ಗೊತ್ತಿರುವುದಿಲ್ಲ, 6 ನೇ ಪ್ರತಿವಾದಿಗೆ ಈಗ 20 ವರ್ಷ ಇರಬಹುದು, 7 ನೇ ಪ್ರತಿವಾದಿಗೆ 18 ವರ್ಷ ಇರಬಹುದು. ಶರಣಪ್ಪ ಸುಮಾರು 16 ವರ್ಷಗಳ ಹಿಂದೆ ತೀರಿಕೊಂಡಿರುತ್ತಾರೆ. ಸದರಿಯವರ ಮದುವೆಯನ್ನು 4 ನೇ ಪ್ರತಿವಾದಿ ಮಾಡಿರುತ್ತಾರೆ ಅಂದರೆ ಸರಿಯಲ್ಲ. 7 ನೇ ಪ್ರತಿವಾದಿಯ ವಯಸ್ಸು 18 ವರ್ಷ ಇದೆ, 16 ವರ್ಷಗಳ ಹಿಂದೆ ಸದರಿಯವರಿಗೆ 20 ವರ್ಷ ಇರಬಹುದು ಎಂದು ನಡೆಯುತ್ತಾರೆ.

**35.** PW-3 has deposed that ವಾದಿಗೆ ಮದುವೆಯಾಗಿ ಅಂದಾಜು 15 ವರ್ಷಗಳು ಆಗಿದೆ. 6 ನೇ ಪ್ರತಿವಾದಿಗೆ ಮದುವೆಯಾಗಿ 7 ವರ್ಷಗಳಾಗಿರುತ್ತವೆ. 7 ನೇ ಪ್ರತಿವಾದಿಗೆ ಮದುವೆಯಾಗಿ ಅಂದಾಜು 10 ವರ್ಷಗಳಾಗಿರಬಹುದು. 6 ನೇ ಪ್ರತಿವಾದಿಯ ಮದುವೆಯಾದಾಗ ಅಂದಾಜು 20 ವರ್ಷ ವಯಸ್ಸು ಆಗಿರಬಹುದು ವಾದಿ, 6 ಮತ್ತು 7 ನೇ ಪ್ರತಿವಾದಿಯರ ಮದುವೆಯಾದಾಗ ಸುಮಾರು 20 ವರ್ಷ ವಯಸ್ಸಾಗಿರಬಹುದು ಎಂದು ನುಡಿಯುತ್ತಾರೆ. Admittedly there is no documentary evidence to show that when the father of plaintiff was died. The cause title of plaint discloses at the the plaintiff aged 28 years. The oral evidence of PW-2 and 3 goes to show that father of plaintiff was died about 18 years back.

**36.** PW-2 and 3 have stated that, they denied that the defendant No.4 sold the suit property for clearing debt which

performing the marriage of defendant No.6 and 7. PW-1 stated that, her father died about 5 years back. PW-3 has stated Sharanappa died about 16 years back. PW-2 deposed when father of plaintiff was died.

**37.** As per record of right of the year 2016-17, pertains to Sy.No.62/3, it appears that the name of defendant No.9 has been entered to an extent of 06 acre 14 guntas as per MR.No.H5/2019-20 dated 22.11.2019 by virtue of registered sale deed as per Ex.D3 to 6.

**38.** It is settled proposition of Hindu Law that, Karta got unfettered right to sell joint family property in favour of any third person, provided such sale is for family and legal necessities. Further it is also settled proposition of law, the purchaser who contending he is bonafide purchaser for valid consideration without notice, he has to prove legal and family necessities of his vendor. Such family and legal necessities of vendor has to be proved by purchaser independently with cogent and acceptable evidence.

**39.** Fact to be noted that Kartha of family having special power to alienate the property for the benefit of joint family or

for the benefit or estate of joint family. In this regard it is relevant to refer the Article 254 and 241 of Mulla's Hindu Law.

"20. Mulla in his classic work Hindu Law while dealing with the right of the father to alienate any ancestral property said in Article 254, which reads as under:

**"Article 254**

**254. Alienation by father.**-A Hindu father as such has special powers of alienating coparcenary property, which no other coparcener has. In the exercise of these powers he may:

(1) Make a gift of ancestral movable property to the extent mentioned in Article 223, and even of ancestral immovable property to the extent mentioned in Article 224;

(2) Sell or mortgage ancestral property, whether movable or immovable, including the interest of his sons, grandsons and great-grandsons therein, for the payment of his own debt, provided the debt was an antecedent debt, and was not incurred for immoral or illegal purposes (Article 294)."

21. What is legal necessity was also succinctly said by Mulla in Article 241, which reads as under:

**"Article 241**

**241. What is legal necessity.**- The following have been held to be family necessities within the meaning of Article 240:

(a) payment of Government revenue and of debts which are payable out of the family property;

(b) maintenance of coparceners and of the members of their families;

(c) marriage expenses of male coparceners, and of the daughters of coparceners;

(d) performance of the necessary funeral or family ceremonies;

(e) costs of necessary litigation in recovering or preserving the estate;

(f) costs of defending the head of the joint family or any other members against the serious criminal charge;

(g) payment of debts incurred for family business or other necessary purpose. In the case of a manager other than a father, it is not enough to show merely that the debt is a preexisting debt;

**40.** The recital of sale deed as per Exp.6 and Ex.D1 clearly goes to show that defendant No.4 had sold the suit property for family difficulties or necessities. As per plaintiff cause title the plaintiff born in the year 1982. Therefore, they unaware with regard to what financial problems/difficulties

were there at the time of execution of sale deed. Even the defendant No.1 to 8 have not entered into witness box to adduce evidence and tendered himself for cross examination. Now the plaintiff can not permitted that without consent of plaintiff and defendant No.4 illegally executed registered sale deed and the defendant No.2, 4 and 5 colluding the officials of revenue authority got entries in their names, because the plaintiff not born at the time of execution of sale. Hence, contention of plaintiff is not acceptable one.

**41.** The recital of sale deed as per Exp.6 and Ex.D.1, it appears defendant No.4 executed sale deed in favour of defendant No.9 in respect of Sy.No.62/Aa to an extent of 4 acre 4 guntas. The same is registered on 18.10.2019. On the same day the possession of entire suit property was handed over to defendant No.9 and due to family difficulties the defendant No.4 sold suit item No.3 property in favour of defendant No.9. Therefore, inference can be held that due to financial difficulties deceased defendant No.4 being kartha of family was having alienable right to execute registered sale deed in favour of defendant No.9 in respect of suit property and the same is binding upon plaintiff and defendant No.1 to 8.

**42.** ExD.7 to 10 indicate that the defendant No.9 submitted an application before Superintendent of Police, Yadgiri, PSI Kodekal, CPI, Hunasagi and Tahasildar, Shorapur seeking for police protection. On perusal of the same, it appears that the vendor of suit item No.3 property in fevour of defendant No.4 and others namely HanumantrayaGouda S/o Ambrappagouda Police patil, Basanngouda S/o Krishnappagouda Police patil and Shivappagouda S/o Krishnappagouda Police patil R/o Bailkunti have obstructed to harvesting Sugarcane in his purchased property bearing SyNo.62/3 to an extent of 6 acre 14 guntas and have also gave life threat to him by using iron rod and sticks on 16.12.2023, 18.12.2023 and 20.12.2023. The contents of these documents and as well as the act of defendant No.4 itself clearly goes to show that the defendant No.4 himself filed this suit through his sister i.e., plaintiff.

**43.** In order to prove the family and financial difficulties of family of plaintiff and defendant No.1 o 8, Ld counsel for defendant No.9 cross examined at length. In the cross examination of PW-2 has further elicited that, ವಾದಿ ಮತ್ತು ಪ್ರತಿವಾದಿ ಕುಟುಂಬದಲ್ಲಿ 4 ಕರಾರು ಪತ್ರ ಮಾಡಿರುತ್ತಾರೆ ಎಂದರೆ ನನಗೆ ಗೊತ್ತಿರುವುದಿಲ್ಲ ಸದರಿ ಪತ್ರಗಳ ಪೈಕಿ ಒಂದು ವತ್ತಿ ಪತ್ರವಾಗಿರುವುದು ನನಗೆ ಗೊತ್ತಿರುತ್ತದೆ, ಉಳಿದವುಗಳ ಬಗ್ಗೆ ನನಗೆ ಗೊತ್ತಿರುವುದಿಲ್ಲ,

ಸಾಕ್ಷಿ ಕರಾರು ಪತ್ರಗಳಿಗೆ ಸಂಬಂಧಿಸಿದ 4 ದಾಖಲೆಗಳನ್ನು ತೋರಿಸಿ ಕೇಳಲು ಸಾಕ್ಷಿಯು ನನಗೆ ಕಣ್ಣು ಕಾಣುವುದಿಲ್ಲ ಎಂದು ಹೇಳುತ್ತಾರೆ. ಮುಂದಿನ ದಿನಾಂಕದಂದು ಕನ್ನಡಕವನ್ನು ತಂದು ಸಾಕ್ಷಿ ನುಡಿಯುತ್ತೀಯಾ ಅಂತ ನ್ಯಾಯಾಲಯವು ಕೇಳಲಾಗಿ ಸಾಕ್ಷಿಯು ಆಗುವುದಿಲ್ಲ ಎಂದು ನುಡಿಯುತ್ತಾರೆ. The witness feigns ignorance of the same without denying the suggestions specifically. PW3 has stated that mother's name of plaintiff is Gangavva. He stated he did not know that said Gangavva executed agreement of sale in respect of her family properties. He deposed that he did not know that mother of plaintiff Gengavva executed sale deed in favour of one Basavarai S/o Karibassaya Ganachari.

**44.** In order to prove his contention the defendant No.9 has produced online copies of sale deeds as per ExD.17 to 19. The recital of said ExD.17 indicates that one Mahadevi W/o Malakajappa Lingadalli executed cancellation of an agreement of sale deed dated 08.03.2017 in favour of the defendant No.4 on 10.07.2019 in respect of Sy.No.62/3 to an extent of 4 acres.

**45.** The recital of agreement sale deed as per ExD.18 indicates that mother of plaintiff Gangavva executed an agreement of sale without possession in favour of one Basavaraj S/o Karibasayya Ganachari for consideration amount of Rs.3,50,000/- on 11.08.2014 in respect of suit item No.3 property.

**46.** The recital of agreement of sale deed as per ExD.19 indicates that one Basavaraj S/o Karibasayya Ganachari executed cancellation of an agreement of sale dated 11.08.2014 in favour of mother of plaintiff Gangavva on 09.07.2019 in respect of suit item No.3 property.

**47.** It is duty of purchaser to make reasonable verify the records in respect of property before purchasing property. But the testimony of PW-1 and 2 and ExD.17 to 19 goes to show that as a kartha of family with as Kartha with help of mother of plaintiff the defendant No.4 executed agreement of sale in favour of one Mahadevi by receiving advanced consideration amount of Rs.8,68,000/- on 08.03.2017. the same is cancelled on 10.07.2019. Further indicates that mother of plaintiff executed an agreement of sale in favour of one Basavaraj S/o Karibasayya Ganachari by receiving advanced consideration amount of Rs.3,44,000/- on 11.08.2014. The same is cancelled by the mother of plaintiff on 09.07.2019. In the said documents it was clearly mentioned that due family and financial difficulties the mother of plaintiff and defendant No.4 executed an agreement of sale deeds in favour above persons. The oral evidence of PW1 and 2 and documentary evidence goes to show that mother and defendant No.4 were having much

financial difficulties at that relevant time. Further indicates the defendant No.4 being the karta of joint family for his family and legal necessity i.e., for clearing the family debt and performing the marriages of his sisters has sold the suit schedule property item No.3. The oral evidence is supported by documentary evidence. It is unexplained by PW 1 that whether now the marriage of defendant No.8 performed or not. Even in spite of issuance of suit summons, the defendant No.4 not appeared before court and contest the suit. Therefore, inference can be drawn that as a kartha of family for performing marriages of sisters and financial difficulties the defendant No.4 the defendant No.4 has sold suit item No.3 property. Being Kartha of family the defendant No.4 was having every to alienate suit property in fevour of defendant No.9. So, after purchase of suit item No.3 property the defendant No.9 is a bonafied purchaser. Hence, this court of the opinion that the sale deed dated 22.11.2019 executed by defendant No.4 in fevour of defendant No.9 is binding upon plaintiff and other joint family members. **With these observations, I answered issue No.1 in the partly Affirmative and issue No.2 in the Affirmative and issue No.3 in the Affirmative.**

**48. Issue No.4:** It is pleaded and the same is deposed by DW1 before court that the plaintiff has not included the joint family properties bearing Sy.No.62/2 and Sy.No.62/Aa situated at Bailkunti Village. Further stated that the defendant No.4 has sold Sy.No.62/2 to an extent of 02 acre 36 guntas in favour of one Parsappa S/o Halwappa Biradar and said property 04 acre 04 gunta out of SyNo.62/Aa has been sold in favour of one Bhimanna S/o Saibanna Budihal. When cross examining PW1 by counsel for defendant has stated that family of plaintiff had 21 acres of land and 03 houses. She stated that she does not know the correct number of said houses. She stated that she had not given information to her counsel with regard to house property. She is having share in the said three houses.

**49.** During the course of argument Ld counsel for defendant No.9 relied upon rulings in **2013 (2) KCCR 1277** in between **Smt. Puttakkaiyah V/s Smt. Basamma since dead by LRs and others**, wherein the Hon'ble High court of Karnataka held that, "all the sharers to be made parties, partition suit should include all the joint family properties."

**50.** Further relied ruling reported in **(2011) 4 KCCR 2461** in between **G.M. Mahendra V/s G.M. Mohan, since deceased by L.R. Smt. Bhavani and Anjuman (SIC)**, wherein the Hon'ble High court of Karnataka held that, a suit for partition should generally include all joint family properties. Failure to include all properties in a partition suit for equitable distribution, especially when alienating alienees' rights are affected, renders the suit for partial partition bad in law.

**51.** In the cross-examination, PW1 has stated that she did not know that her father had sold 06 acre land out of 12 acre in Sy.No.62. She stated that she did not know that at the time of filing suit how much area left in Sy.No.62 and how much landed property sold by whom. PW1 further in cross examination has stated that Sy.No.62 was standing in the name of her father till his death. She stated that the defendant No.4 has got entry in his name by deleting the name of his father about 03 years back. She deposed that she did not know that her father sold 06 acre land in whose favour. It is suggested to PW1 that Sy.No.62/Aa to an extent of 04 acres 04 guntas out of 7 acres sold by his father in favour of Bhimanna S/o Saibana Budihal. The said suggestion is denied by the witness. It is suggested to PW1 that the defendant No.4 has

sold Sy.No.62/2 to an extent of 02 acre 36 guntas in favour of one Parsappa S/o Halwappa Biradar. The said suggestion is denied by the witness. The testimony of PW 1 goes to show that she does not know the details of ancestral and joint family properties. The witness feigns ignorance of the same without denying the suggestions specifically.

**52.** I have gone through the above said citations, I am in respectful agreement with the above said observation. But facts of above said citation and fact of this suit are different. Hence the above side citation is not applicable to this case on hand. Admittedly vendor of properties bearing Sy No.62/Aa and 62/2 not made as parties to the suit. Herein the case the defendant No.9 stated that purchasers of above said properties are not include herein. In suit for partition and separate possession, the purchasers of above said properties are not necessary to include in the suit. But on these grounds suit cannot be dismissed. If the plaintiff and defendant No.1 to 8 are having grievance in respect of above said properties or if the said properties are ancestral properties, they are at liberty to include the above said non suited properties in the Final Decree Proceedings.

**53.** As already discussed supra, the plaintiff has established that suit property No.1 and 2 are ancestral and joint family properties of plaintiff and defendants No.1 to 8 by adducing cogent and convincing evidence and failed to prove that, suit item No.3 property is ancestral and joint family property as on the date of filing suit. The defendant No.9 has established that the defendant No.4 has sold suit item No.3 property for his family and legal necessity and he has a bonafied purchaser. As Sharanappa died intestate, as per Sec.8 of Hindu Succession Act, the plaintiff and defendants No.1 to 8 being the Class-I legal heirs of Sharanappa they inherited the suit item No.1 and 2 properties. The plaintiff and defendants No.1 to 8 being the daughters and sons of deceased Sharanappa are entitled for 1/9<sup>th</sup> share each in suit schedule item No.1 and 2 properties by metes and bounds. Hence, the plaintiff is entitle for relief as sought. **With these observations, I answered issue No.4 in the Affirmative.**

**54. Issue No.5:** In view of the above discussions and findings, I proceed to pass the following:-

**:ORDER:**

➤. The suit of the plaintiffs is hereby decreed.

➤. The plaintiff being the daughter of deceased Sharanappa is entitled for 1/9<sup>th</sup> share in suit schedule item No.1 and 2 properties by metes and bounds.

➤. The defendant No.1 to 8 being the daughters and sons of deceased Sharanappa is entitled for 1/9<sup>th</sup> share each in suit schedule item No.1 and 2 properties by metes and bounds.

➤. The sale deed dated 21-10-2019 executed by the defendant No.4 in favour of defendant No.9 is binding upon plaintiff and other defendant No.1 to 3 and 5 to 8.

➤. Taking into consideration of nature of suit, relationship between parties, time consumed in disposal of same, parties are directed to bear their own cost.

➤. Draw decree accordingly.

(Dictated to the Stenographer directly on the Computer, revised and corrected by me and then pronounced in the open court this the 10<sup>th</sup> day March, 2026).

**(Fakirawwa Kelageri)**  
Senior Civil Judge and JMFC,  
Shorapur.

**ANNEXURE****List of witnesses examined on behalf of the Plaintiff:**

PW.1 : Mahalaxmi W/o Shankargouda D/o Late Sharnappa  
PW.2 : Gopalappa S/o Bhimaraya  
PW.3 : Hanmagouda S/o Amarappagouda Police Patil

**List of witnesses examined on behalf of the Defendants:**

DW.1 : Parusharam S/o Hulgappa Doddamani

**List of documents marked on behalf of the Plaintiffs:**

Ex.P1 to 5 : RTC extracts  
Ex.P6 : C/C of registered sale deed  
Ex.P7 : RTC extract  
Ex.P.8 to 10 : Mutation extracts

**List of documents marked on behalf of the Defendants:**

Ex.D.1 & 2 : RTC extracts  
Ex.D3 : Mutation extract  
Ex.D4 : Registered sale deed

**Senior Civil Judge and JMFC,  
Shorapur.**

**(Judgment pronounced in the open  
court vide separate)**

**ORDER**

➤. The suit of the plaintiffs is hereby decreed.

➤. The plaintiff being the daughter of deceased Sharanappa is entitled for 1/9<sup>th</sup> share in suit schedule item No.1 and 2 properties by metes and bounds.

➤. The defendant No.1 to 8 being the daughters and sons of deceased Sharanappa is entitled for 1/9<sup>th</sup> share each in suit schedule item No.1 and 2 properties by metes and bounds.

➤. The sale deed dated 21-10-2019 executed by the defendant No.4 in favour of defendant No.9 is binding upon plaintiff and other defendant No.1 to 3 and 5 to 8.

➤. Taking into consideration of nature of suit, relationship between parties, time consumed in disposal of same, parties are directed to bear their own cost.

➤. Draw decree accordingly.

Sr.Civil Judge & JMFC,  
Shorapur