



**IN THE COURT OF II nd ADDL.DISTRICT AND  
SESSIONS COURT, YADGIR,  
SITTING AT SHORAPUR.  
:PRESENT:**

**Sri. Yamanappa Bammanagi, B.A.LL.B (Spl.)  
II nd Addl. District & Sessions Judge, Yadgir,  
sitting at Shorapur.**

**DATED THIS THE 13<sup>th</sup> DAY OF MARCH, 2026.**

**R.A. NO.5101/2025  
(OLD R.A. NO.36/2018)**

**Appellant/**

**Plaintiffs: 1.**

1. Vijay Kumar S/o Shivaraj Alabnoor,  
Age: 49 years, Occ: Agriculture &  
Business, R/o Shahapur, Tq:  
Shahapur, Dist: Yadgiri.
2. Sampat Kumar S/o Shivaraj Alabnoor,  
Age: 47 years, Occ: Agriculture &  
Business, R/o Shahapur, Tq:  
Shahapur, Dist: Yadgiri.
- a. Meenaxi.S.Alabnoor W/o Late  
Sampatkumar, Age: 44 years, Occ:  
House wife, R/o House No.19/16  
Arbole Street Shahapur, Dist:  
Yadgiri.
- b. Pradhunkumar S/o Late Sampatkumar  
Alabnoor, Age: 24 years, Occ: Business,



R/o House No.19/16 Arbole Street  
Shahapur, Dist: Yadgiri.

- c.** Prajakta D/o Late Sampatkumar  
Alabnoor, Age: 21 years, Occ: Student,  
R/o House No.19/16 Arbole Street  
Shahapur, Dist: Yadgiri.
- d.** Premkumar S/o Late Sampatkumar  
Alabnoor, Age: 19 years, Occ:  
Mechanic, R/o House No.19/16 Arbole  
Street Shahapur, Dist: Yadgiri.
- 3.** Vikas S/o Mouneshwar Alabnoor,  
Age: 24 years, Occ: Private Service,  
R/o Shahapur Tq: Shahapur, Dist:  
Yadgiri.
- 4.** Nagappa S/o Mouneshwar Alabnoor,  
Age: 22 years, Occ: Student,  
R/o Shahapur Tq: Shahapur, Dist:  
Yadgiri.
- 5.** Rajeshwari W/o Mouneshwar  
Alabnoor, Age: 51 years, Occ: House  
hold, R/o Shahapur Tq: Shahapur,  
Dist: Yadgiri.

**(By Sri.AK Adv.,)**

**//Versus//**



**Respondents**

- Defendants/:**1. Basavaraj S/o Nagappa Alabnoor,  
Age: 64 years, Occ: Agriculture,  
R/o Muchigadda Shahapur, Dist:  
Yadgiri.
- a. Pramilabai Alabnoor W/o Late  
Basavaraj, Age: 62 years, Occ: House  
wife, R/o H.No.10/71 M.G. Road  
Mochigadda Shahapur Tq:  
Shahapur, Dist: Yadgiri.
- b. Satishraj S/o Late Basavaraj Alabnoor,  
Age: 40 years, Occ: Cyber Cafe,  
R/o H.No.10/71 M.G. Road  
Mochigadda Shahapur Tq: Shahapur,  
Dist: Yadgiri.
- c. Praveenraj S/o Late Basavaraj  
Alabnoor, Age: 35 years, Occ: Cyber  
Cafe, R/o H.No.10/71 M.G. Road  
Mochigadda Shahapur Tq: Shahapur,  
Dist: Yadgiri.
- d. Ashwinirani D/o Late Basavaraj  
Alabnoor, Age: 30 years, Occ: House  
hold work, R/o H.No.10/71 M.G. Road  
Mochigadda Shahapur Tq: Shahapur,  
Dist: Yadgiri.
- e. Pradeepraj S/o Late Basavaraj  
Alabnoor, Age: 28 years, Occ: Cyber  
Cafe, R/o H.No.10/71 M.G. Road



Mochigadda Shahapur Tq: Shahapur,  
Dist: Yadgiri.

- 2.** Sudhakar S/o Chandappa Alabnoor,  
Age: 48 years, Occ: Agriculture,  
R/o Arbolla Oni, Shahapur,  
Dist: Yadgiri. **(Died)**
- a.** Supreet S/o Late Sudhakar Alabnoor,  
Age: 22 years, Occ: Pharmacist,  
R/o Arbole Street Shahapur, Tq:  
Shahapur, Dist: Yadgiri.
- b.** Ameit S/o Late Sudhakar Alabnoor,  
Age: 20 years, Occ: Pharmacist,  
R/o Arbole Street Shahapur, Tq:  
Shahapur, Dist: Yadgiri.
- 3.** Jagadish S/o Chandappa Alabnoor,  
Age: 44 years, Occ: Agriculture,  
R/o Arbolla Oni, Shahapur, Dist:  
Yadgiri. **(Died)**
- 4.** Nagappa S/o Chandappa Alabnoor,  
Age: 40 years, Occ: Agriculture,  
R/o Arbolla Oni, Shahapur, Dist:  
Yadgiri.
- 5.** Mahesh S/o Chandappa Alabnoor,  
Age: 38 years, Occ: Agriculture,  
R/o Arbolla Oni, Shahapur, Dist:  
Yadgiri.



6. Maremma W/o Chandappa Alabnoor,  
Age: 74 years, Occ: house hold,  
R/o Arbolla Oni, Shahapur, Dist:  
Yadgiri. **(Died).**

**(R-1 By Sri.NRG. Adv.,)**

**(R-2 to 5 By Sri.ASP. Adv.,)**

### **JUDGMENT**

Being aggrieved by the judgment and decree, dated 04.07.2018, passed by the Ld Senior Civil Judge and JMFC, Shahapur, in O.S.No.11/2014, dismissed the suit of the plaintiffs, hence the plaintiffs are before this court challenging the correctness and legality of the same.

The parties are referred as per their rank in original suit before the trial court for conveniences of the court, the plaintiffs are the appellants before this court as the suit filed by the plaintiffs is dismissed.

Reliefs sought in the plaint by the plaintiffs are for partition and separate possession of their 1/3th share in the suit schedule properties by metes and bounds.

**2. Brief facts of the plaintiffs case:**

It is specific case of the plaintiffs that, one Nagappa is propositus of plaintiffs and defendants, the said Nagappa had 03 sons by name Shivaraj @ Shivarajappa, Basavaraj and Chandappa, said Shivarajappa died before filing suit, said Shivarajappa had 03 sons by name Vijayakumar (P-1), Sampathkumar (P-2), Mouneshwara died leaving behind him his sons by name Vikash (P-3), and Nagappa (P4), Rajeshwari (P-5) W/o deceased Mouneshwar, plaintiffs are representing branch of Shivaraja, second son of propositus is Basavaraja who is defendant No.1, third son of propositus is deceased Chandappa who had 04 sons defendant No.2 to 5, the defendant No.6 is wife of deceased Chandappa, defendant No.2 to 6 are representing branch of deceased Chandappa. Father of plaintiff No.1 and 2 Shivarajappa died on 23.04.2004, there was partition between propositus Nagappa and his 03 sons by name Shivarajappa, Basavaraja and



Chandappa during life time of propositus Nagappa, and joint family properties of propositus Nagappa and his sons are divided into 04 parts, the present suit schedule properties are fallen to the share of propositus Nagappa, said propositus Nagappa died on 08.12.1989 intestate, so, the plaintiffs and defendants succeeded to the suit properties left by propositus and plaintiffs and defendant No.1 and defendant No.2 to 6 are entitle for equal share in the properties left by propositus Nagappa which are fallen to his share in the partition took place in the year 1983, and same was reduced into writing on 16.07.1983, the suit properties are ancestral properties of plaintiffs and defendants, such being the facts, after death of propositus Nagappa the defendant No.1 tried to alienate the suit properties behind the back of plaintiffs, hence the plaintiffs demanded to the defendant No.1 for their share in the suit properties, since the defendant No.1 refused to give their share in the suit properties



hence the plaintiffs have filed this suit for the reliefs sought in the plaint.

**3.** The trial court has issued suit summons to the defendants, the defendants appeared through counsel, the defendant No.1 filed written statement, the defendant No.2 to 6 though appeared through counsel they did not choose to file their written statement. The defendant No.1 filed written statement admitting the relationship between the plaintiffs and defendants and further contended that, there was a partition between propositus Nagappa and his 03 sons in respect of their joint family properties, said partition took place during life time of propositus Nagappa, and in respect of said partition the memorandum of family settlement executed on 08.11.1983 between propositus Nagappa and his 03 sons, but, the defendant No.1 denied the execution of Watni patra (partition deed) dated 16.07.1983 as contended by the plaintiffs in the plaint, further defendant No.1 specifically denied that, the suit



properties fallen to the share of Nagappa as contended in the plaint, and took defence that, the suit properties fallen to the share of defendant No.1 and same have been mentioned in the family settlement dated 08.11.1983, and denied the facts that, the suit properties are left by grand father of plaintiffs, and denied the share of plaintiffs and defendant No.2 to 6 in the suit schedule properties, and the defendant No.1 specifically denied the contents of plaint para No.4 to 10 as false, and revenue entries are made behind the back, and revenue entries are created, the plaintiffs and defendant No.2 to 6 are not in joint possession of suit properties and plaintiffs and defendant No.2 to 6 have no share in the suit schedule properties.

Further, contended that, the defendant No.1 is absolute owner and in possession of flour Mill, and entitle for its income, the defendant No.1 obtained NA order from competent authority, and formed the plots the sold some plots to purchasers, the plaintiffs and



defendant No.2 to 6 have no share in the suit properties, no cause of action arose to file the present suit, the suit of the plaintiffs is barred by limitation and plaintiff's suit is hit by resjudicata as plaintiffs have filed suit in OS No.21/1994 for the same reliefs in respect of same properties, same was dismissed, and hence plaintiffs are estopped by their conduct. It is specific defence of defendant No.1 taken in written statement in further plea that, there was partition effected between propositus Nagappa and the defendant No.1 and father of defendant No.2 to 5 in respect of their joint family properties, after partition a family settlement deed has been executed on 08.11.1983 in the presence of witness, and parties to the said deed have put their signature in the presence of witnesses, as per the said partition suit properties are fallen to the share of defendant No.1, so, the defendant No.1 is absolute owner and in possession of suit schedule properties by virtue of said partition, on basis of said



partition mutation have been entered in the records of properties though the father of the plaintiffs objected for mutation in the name of defendant No.1, in the said partition Sy.No.140/2, house No.9-84 and house No.1-25-1 are fallen into the share of father of plaintiffs, thereafter, father of the plaintiffs sold his properties under registered sale deed, the plaintiffs well aware about the said sales, further, Sy.No.401 and Sy.No.157 of Halisagar village, and house No.9-84 and house No.5-94 to the extent of half portion towards Northen side situated at Shahapur are fallen to the share of father of defendant No.2 to 5 and the father of defendant No.2 to 5 and defendant No.2 to 6 have sold their properties, thereafter, the plaintiffs and defendant No.2 to 6 colluded each other and filed present false suit with this the defendant No.1 prayed for dismissal of the suit.

**4.** On basis of pleadings of the parties and documents produced by both the parties and on basis of



material placed before it, the trial court has framed following;

**:ISSUES:**

1. *Whether the plaintiffs prove that the suit schedule properties were fallen to the share of their grandfather Nagappa in the year 1983 ?*
2. *Whether the defendant No.1 proves that family settlement in the year 1983 as he contended in the written statement ?*
3. *Whether the 1<sup>st</sup> defendant proves that the suit schedule properties were fallen to his share in that family settlement ?*
4. *Whether the 1<sup>st</sup> defendant proves that the suit is hit under principles of res-judicate ?*
5. *Whether the defendant No.1 proves that suit is barred by limitation ?*
6. *Whether the defendant No.1 proves the valuation of the suit schedule properties are incorrect and this court has no pecuniary jurisdiction to try the suit ?*
7. *Whether the defendant No.1 proves that the plaintiffs are estopped to claim the relief against him ?*



*8. Whether the defendant No.1 proves that plaintiffs have filed Vexatious suit and thereby he is entitled for compensatory cost of Rs.25,000/- ?*

*9. Whether the boundaries of the suit schedule properties are incorrect and misleading ?*

*10. Whether the plaintiffs prove that they are having 1/3rd share in the suit schedule properties ?*

*11.What order or decree?*

**Addl. Issues**

*1. Whether the 1<sup>st</sup> defendant prove that the description and boundaries of the amended properties are still in correct ?*

**5.** In order to prove her case the plaintiff No.2 is examined as PW1 and one witness is examined as PW2, and got marked the documents as per Ex.P1 to 16 and Ex.P16(a), on the other hand, the Lrs of defendant No.1 (b) is examined as DW1, and two witnesses are



examined as DW2 and 3, and got marked the documents as per Ex.D1 to 21.

**6.** After hearing arguments on both side and after considering the oral and documentary evidence led by the both the parties, and perusal of material before it by both the parties, the trial court passed the judgment and decree, and dismissed the suit of the plaintiffs, being aggrieved by the same the appellants/plaintiffs are before this court challenging the correctness and legality of the same, on the following;

**“GROUNDS”**

*I. The judgment and decree under challenge is not sustainable under the law and facts, and reasoning assigned by the trial court not correct, the trial court failed to appreciate the oral and documentary evidence led by the both the parties.*



**II.** *The trial court failed considered the facts admitted by the defendant No.1 in his cross-examination, and failed to appreciate the facts pleaded in the pleadings in OS No.21/1994, and admitted facts that, the defendant No.1 specifically deposed that, father of the plaintiffs Shivaraja objected the mutation entry entered the name of defendant No.1 in the revenue records, and on basis of objection of father of the plaintiffs the proceedings in respect of mutation entry are pending before the Deputy Commissioner, and during pendency of said proceedings the father of plaintiffs died.*

**III.** *The trial court failed to considered the facts that, the father of the plaintiffs No.1 and 2 raised objection against defendant No.1 and denied the absolute title of defendant No.1 over the suit properties till his death, trial court failed to appreciate Ex.D1 is never acted upon for more than 30 years, the defendant No.1 failed to prove the partition as per the Ex.D1, and Ex.D1 is created document.*



**IV.** *The trial court failed to appreciate Ex.D2 to 21 as those documents are disputed documents during life time of plaintiffs father, and trial court failed to appreciate Ex.P16 and Ex.P16(a) and came to wrong conclusion. looking from any angle the judgment and decree under challenge is illegal and liable to be set-aside.*

**7.** On admitting the appeal this court has passed order on IA No.I & II filed U/o 41 Rule 5 of CPC and stayed the execution and operation of judgment and decree under challenged till further order, this court issued notice to respondents, and respondents appeared through counsel and TCR received.

**8.** Heard argument on both side. In support of his argument the Ld counsel for appellants relied on the decision reported in;

*A) KCCR 2013(1) (DB) para No.672 in case of S.K.Lakshminarasappa since deceased by his Lrs V/s Sri.B.Rudraiah and Others.*



*B) 2007(2) KCCR (DB) in case of  
S.B.Ittigi and Another V/s S.V.  
Sulochana and Others.*

9. I have re-appreciated oral and documentary evidence led by the parties before the trial court and perused the judgment and decree of trial court and material placed before the court, on perusal of the oral and documentary evidence, led by both the parties before the trial court, the point that would arise for my consideration are as follows;

**POINT NO.1:** Whether the plaintiffs proves that, the partition took place between propositus Nagappa and his 03 sons by name Shivaraja @ Shivarajappa, Basavaraja and Chandappa, in terms of Watni Patra dated 16.07.1983, in respect of joint family properties of plaintiffs and defendants and suit properties fallen to the share of propositus Nagappa ?



**POINT NO.2:** Whether defendant No.1 proves that, partition took place between propositus Nagappa and his 03 sons by name Shivaraja @ Shivarajappa, Basavaraja and Chandappa in terms of Watni Patra dated 08.11.1983 in respect of joint family properties of plaintiffs and defendants and suit properties fallen to the share of defendant No.1 ?

**POINT NO.3:** Whether the plaintiffs proves that, they are entitle for 1/3rd share in the suit schedule properties left by propositus Nagappa by metes and bounds as sought in the plaint ?

**POINT NO.4:** Whether the defendant No.1 proves that, the suit filed by the plaintiffs is hit by law of limitation ?

**POINT NO.5:** Whether the defendant No.1 proves that, the suit filed by the plaintiffs is hit by Sec.11 of CPC ?



**POINT NO.6:** Whether the plaintiff proves that, they are entitled for the reliefs sought in the plaint ?

**POINT NO.7:** What order or decree ?

10. My answer to the above points are as follows:

**Point No.1: in the Affirmative,**

**Point No.2: in the Negative,**

**Point No.3: in the Affirmative,**

**Point No.4: in the Negative,**

**Point No.5: in the Negative,**

**Point No.6: in the Affirmative,**

**Point No.7: As per the final order,**

**for the following:-**

**REASONS**

11. **POINT No.1 to 3:** These points are interconnected to each other, and hence taken together for common discussion in order to avoid repetition of facts and evidence. In order to prove his case the plaintiff No.2 is examined as PW1 and one witness by name Vishwanath S/o Shantavirappa Mastara Pattar is examined as PW2, and got marked documents as per



Ex.P1 to P16 and Ex.P16(a) and Ex.P1 is the certified copy of MR No.238, Ex.P2 to 5 are the RTC extracts, Ex.P6 to 8 are the house extracts, Ex.P9 is the endorsement of the Tahasildar office, Ex.P10 is the certified copy, Ex.11 is the certified copy of order, Ex.P12 is the certified copy of plaint in OS No.21/1994, Ex.P13 is the certified copy of written statement in OS No.21/1994, Ex.P14 is the issues framed in said suit, Ex.P15 is the certified copy of mutation, Ex.P16 is the certified copy of Watni Patra, Ex.P16(a) is the original Watni Patra.

**12.** On the other hand, the defendant No.1 is examined as DW1 and one witness is DW2 and got marked documents as per Ex.D1 to D21, and Ex.D1 is the original Watni patra produced in OS No.21/1994, Ex.D2 to 11 are the RTC extracts, Ex.D12 and 13 are the assessments, Ex.D14 is the MR, Ex.D15 is the letter to AC, Ex.D16 to 19 are the certified copy of plaint, written statement and order on IA No.I in OS



No.21/1994, Ex.D20 is the certified copy of order of DC,  
Ex.D21 is the Map.

**13.** On careful scrutiny of pleadings of the parties and oral and documentary evidence led by the both the parties, it is clear that, some facts are not in dispute between the parties, the relationship between the plaintiffs and defendants with propositus is not in dispute, it is also not in dispute between the parties that, the propositus Nagappa and his 03 sons were jointly owned the properties, said joint family properties are divided into 04 parts, allotted one part to propositus, other three parts to his sons

**14.** Specific case of the plaintiff is that, there was a partition between propositus Nagappa and his 03 sons by name Shivaraj @ Shivarajappa, Basavraja and Chandappa during the life time of propositus in respect of joint family properties and the suit properties are fallen to the share of Nagappa, and said Nagappa died intestate, hence his sons i.e., Shivaraja, Basavaraja and



Chanadappa are entitle for the properties left by their father Nagappa and the present plaintiffs are the sons of deceased Shivaraj, Basavaraj is son of propositus and the deceased Chandappa is represented by defendant No.2 to 6, hence the plaintiffs, defendant No.1 and defendant No.2 to 6 are entitle for 1/3rd share in the suit schedule properties and said partition is shown in Ex.P16 and Ex.P16(a).

**15.** The specific case of the defendant No.1 is that, there was a partition between the propositus Nagappa and his 03 sons by name Shivaraja, Basavaraj and Chandappa, the said partition took place during life time of propositus Nagappa and suit properties are fallen to the share of defendant No.1, and said partition reduced into writing as per Ex.D1, after partition the father of the plaintiffs and father of the defendant No.2 to 5 sold their properties, thereafter, the plaintiffs and defendant No.2 to 6 colluded each other and filed false suit against defendant No.1, with this defendant No.1



contended that, the plaintiffs and defendant No.2 to 6 have no share in the suit properties and suit is hit by properties was dismissed and the present suit is barred by limitation.

**16.** On careful scrutiny of facts pleaded in the pleadings of the both the parties and oral and documentary evidence it is clear that, the plaintiffs relied on Ex.P16 and 16(a) partition and to prove the facts that, suit properties are fallen to the share of propositus Nagappa, and the defendant No.1 is relied on Ex.D1 to prove the facts of partition and to prove the facts that suit properties are fallen to his share. Ex.P16 is certified copy of Ex.P16(a). Ex.P16(a) and Ex.D1 are original unregistered Watni Patra, both documents are said to have been executed by the propositus Nagappa and his 03 sons in respect of partition and their share in their joint family properties.

**17.** The defendant No.1 admits the relationship between the parties and it is also not in dispute that,



the properties shown in Ex.P16(a) and Ex.D1 are the joint family properties of propositus Nagappa and his 03 sons. On perusal of the plaintiffs case as contended in the plaint, and as per Ex.P16(a) the joint family properties of Nagappa and his 03 sons are not in dispute as it could be seen from the written statement of defendant No.1. the only dispute is that, suit properties fallen to the share of propositus Nagappa, but, the defendant No.1 disputed the same and contended that, the suit properties fallen to his share and plaintiffs and defendants No.2 to 6 have no share in the suit properties.

**18.** In order to prove the partition which took place between the propositus Nagappa and his 03 sons, in respect of their joint family properties, the plaintiffs relied on Ex.P16(a) original unregistered Watni Patra. I would like to appreciate oral and documentary evidence of both the parties. The plaintiffs relied on Ex.P16(a), and Ex.P1 mutation entries. When submitted the report



for entered mutation on basis of Ex.D1 before the revenue authority the father of the plaintiffs objected, on basis of said objection the case registered before the Tahasildar Shahapur, and after enquiry the Tahasildar Shahapur made an order on objection and on basis of order of Tahasildar, mutated as per Ex.P15 mutation entry, being dissatisfied with the order of Tahasildar Shahapur the plaintiffs have filed the suit for partition in respect of present suit schedule properties against the present defendants in OS No.21/1994 on basis of Ex.P16(a) which was dismissed for non prosecution.

**19.** Off-course, revenue records alone are not sufficient proof of title, but, they can be used as a supporting piece of evidence to prove a family arrangement or partition among the joint family members in respect of their properties. Off-course unregistered partition deed is inadmissible to prove the partition itself under Sec.49 of the Registration Act, but it can be used for collateral purpose. Revenue entries



can be evidence of possession which is crucial factor in establishing the reality of a partition and family arrangement.

**20.** Off-course, revenue entries are not proof of title, but, they can show the fact of possession at a particular time, and they can be used a supporting piece of evidence which corroborates the fact of an unregistered family arrangement cum partition. The evidentiary value of revenue entries depending upon the special facts and circumstances of the each case. The admissibility of unregistered partition deed is inadmissible to prove the partition itself U/Sec.49 of Registration Act. However, it may be used for collateral purpose such as proving a separate agreement or the facts of possession.

**21.** Now I would like to appreciate the evidence of plaintiffs and defendants extracted supra as to whether those evidence are sufficient to prove the fact that, there was a partition between the propositus



Nagappa and his 03 sons in respect of their joint family properties as per Ex.P16.

**22.** Thus, all documents produced by the plaintiffs and defendants clearly proves that, plaintiffs father and defendant No.1 and father of the defendant No.2 to 5 are jointly owned the properties shown in the plaint as well as in the written statement of defendant No.1.

**23.** The plaintiffs specifically deposed that, in the partition took place between propositus Nagappa and his 03 sons, in respect of joint family properties the suit properties are fallen to the share of propositus Nagappa, the said partition has been reduced into writing, I would like to extract the relevant portion of Ex.P16(a), which reads thus;

ವಾಟನೀ ಪತ್ರ

ಶ್ರೀ ನಾಗಪ್ಪ ತಂದಿ ಚಂದಪ್ಪಾ ಅಲಬನೂರ ತಾಲೂಕಾ  
ಶಹಪೂರ ಜಿಲ್ಲಾ ಗುಲಬರ್ಗಾ ನಾನು ಇಂದು ನನ್ನ ಮತ್ತು ನನ್ನ  
ಹಿರಿಯರ ಆಸ್ತಿಯನ್ನು ನನ್ನ ಪ್ರಬುದ್ಧ ಮಕ್ಕಳಾದ ಜೇಷ್ಠ ಪುತ್ರ  
ಶಿವರಾಜಪ್ಪಾ ಚಂದಪ್ಪಾ ಬಸವರಾಜಪ್ಪಾ ಇವರಿಗೆ ಅವರ ಇಚ್ಛಾ  
ಪ್ರಕಾರ ಮತ್ತು ಎಲ್ಲರ ಮನರಾಜಿಯಿಂದ ಯಾವ ತಕರಾರು ಇಲ್ಲದೇ



ಪಂಚದ ಸಮಕ್ಷಮದಲ್ಲಿ ಕೆಳಗೆ ತೋರಿಸಿದ ಒಟ್ಟು ಆಸ್ತಿಯನ್ನು ನಾಲ್ಕು ಭಾಗಗಳನ್ನಾಗಿ ಮಾಡಿ ಹಂಚಿರುತ್ತದೆ.

2. ಒಟ್ಟು ಸ್ಥಿರ ಆಸ್ತಿಯ ವಿವರ:  
ಮನೆಗಳು :- (3) ಹಿರಿಯರ ವಾಸದ ಮನೆ ನಂ.5-94- ಗಿರಣಿ ಮನಿ, ಕಂಟಿ ಸಹನಸಾನ ಮನೆ (ಗೋದಾಮ) 9-84 ದಿ

ಭೂಮಿಗಳು: (7) ಚಂದ್ರಬಟ್ಟನ ಹೊಲ (ಸ.ನಂ.401, 402, ಸಡಕಿನ ಹೊಲ ಸ.ನಂ.(157) ಗುಬ್ಬಿಬಾಯಿ ಪಟ್ಟ (ಸ.ನಂ.140/2) (ಸ.ನಂ.13/1) ಕೊಂಡೆರಾಯನ ಹೊಲ (ಸ.ನಂ.592/2), ಹಳ್ಳದ ಹೊಲ (ಸರ್ವೆ.ನಂಬರ 381/2) ಭತ್ತದ ಗದ್ದಿ (ಸ.ನಂ.136.

ಅಂಗಡಿಗಳು: (4) ಹಳೆ ಅಂಗಡಿ (ನಂ.5-94), ಸಣ್ಣ ಅಂಗಡಿ (ನಂ.5-94)ದ ಹೊಸ ಅಂಗಡಿ ಬಿಲ್ಡಿಂಗ (ನಂ.1-25), ಮೂಲಿ ಅಂಗಡಿ (ನಂ.5-94),

ಮಶಿನರಿ: (2) ಕಂಟ ಹಿಟ್ಟಿನ ಗಿರಣಿ, ಖಾರ ಕುಟ್ಟುವ ಮಶೀನ ಮತ್ತು ಬಂದುಸಾಪಟೀನ 140.

2. ಚರ ಆಸ್ತಿ ಇಲ್ಲ

3. ಮೇಲೆ ಕಾಣಿಸಿರುವ ಆಸ್ತಿಯಲ್ಲಿ ನಾಲ್ಕು ಭಾಗಗಳನ್ನಾಗಿ ಮಾಡಿರುತ್ತದೆ.

1. ಬಸುರಾಜಪ್ಪಾನ ಹಿಸೆಗೆ ಬಂದ ಆಸ್ತಿ -

ಮನೆ (ನಂ.5- 94), 9 ಫೀಟ ಗೋದಾಮ ನಾನು (ಪೂರ್ವಭಾಗಕ್ಕೆ ನಂ.9-84) ಕೊಂಡೆರಾಯನ ಹೊಲ (ಸರ್ವೆ ನಂಬರ 592/2 ಉಸಗಿನ ಪಟ್ಟಿ (13/3) ಚಂದ್ರಬಟ್ಟನ



ಹೊಲದಲ್ಲಿ 2 ಎಕರೆ ಸವಳ ಭೂಮಿ (ಸರ್ವೆ ನಂ.401,  
402 ಅಂಗಡಿ ಹಳೆದು ನಂ.5-94).

2. ಚಂದ್ರಪ್ರಾಣ ಹಿನ್ನೆಗೆ ಬಂದ ಆಸ್ತಿ:-

ಒಂದು ಮನೆ (ನಂ.9- 84) (ಬೀರ ಭೀಮರಾಯನ ಮನೆಗೆ  
ಹತ್ತಿದ್ದು, 9 ಫೀಟು ಗೋದಾಮ (ನಂ.9-84) ಪಶ್ಚಿಮಭಾಗಕ್ಕೆ  
ಅಂಗಡಿ ಸಣ್ಣದು ನಂ.5-96, ಭೂಮಿ ಶಡಕಿನ ಹೊಲ  
(ಸ.ನಂ.157) ಗುಬ್ಬಿಬಾಯಿ ಪಟ್ಟಿ  
(ಸ.ನಂ.140/2) ಚಂದ್ರಬಿಟ್ಟನ ಹೊಲ 7 ಎಕರೆ  
(ಸರ್ವೆ.ನಂ.401).

3. ಶಿವರಾಜಪ್ಪಾಣ ಹಿನ್ನೆಗೆ ಬಂದ ಆಸ್ತಿ:-

ದೊಡ್ಡ ದುಕಾನ ಬಿಲ್ಡಿಂಗ (ಎರಡು ಅಂತಸ್ತಿನದು) ನಂ.1-25  
ಮನೆಯು ಅರೆ ಸಿ. ಸಿ. ಮೂರು ಕೋಣೆಗಳುಳ್ಳದ್ದು (ನಂ.9-84)  
(ಚಟ್ರಕಿ ಸೂಗಪ್ಪನ ಮನೆಗೆ ಹತ್ತಿದ್ದು 9 ಫೀಟ ಗೋದಾಮ ದಕ್ಷಿಣ  
ಭಾಗದ್ದು.

4. ನಾಗಪ್ಪ ಮತ್ತು ಶ್ರೀಮತಿ ಚಿನ್ನಮ್ಮ ಇವರ ಪಾಲಿಗೆ ಬಂದ ಆಸ್ತಿ :-

ಒಂದು ಗಿರಣಿ ಮನೆ ಸಂಪೂರ್ಣ (ನಂ.5-94) ಒಂದು ಮಾಲಿಯ  
ಅಂಗಡಿ (ನಂ.5-94) ಒಂದು ಹಣ್ಣದ ಹೊಲ (ಸ.ನಂ.381) ಒಂದು  
ಭತ್ತದ ಗದ್ದಿ (ಸ.ನಂ.136).

4. ಶರತ್ತುಗಳು: ಎಲ್ಲಾ ಮಕ್ಕಳು ತಮ್ಮ ತಮ್ಮ ಭಾಗಕ್ಕೆ ಬಂದ ಆಸ್ತಿಯನ್ನು  
ತಮ್ಮ ತಮ್ಮ ಹೆಸರಿನಲ್ಲಿ ಮಾಡಿಸಿಕೊಳ್ಳಬೇಕು. ಇವರ ಜವಾಬ್ದಾರಿ ನಿಮ್ಮ  
ಮೇಲೆ ಇರುತ್ತದೆ. 2) ನನ್ನ ಮತ್ತು ನನ್ನ ಶ್ರೀಮತಿಯ ಉಪಜೀವನಕ್ಕಾಗಿ  
ಇಟ್ಟು ಕೊಂಡ ಆಸ್ತಿಯಲ್ಲಿ ಮಕ್ಕಳಿದ್ದು ಯಾವ ತರಹದ ಹಕ್ಕು ಹಾಗೂ  
ಅಧಿಕಾರ ಇರುವುದಿಲ್ಲ. ಮಕ್ಕಳು ತಮ್ಮ ವಚನದ ಪ್ರಕಾರ  
ನಡೆದುಕೊಳ್ಳಬೇಕು.

3. ನಮ್ಮ ಪಾಲಿಗೆ ಬಂದ ಆಸ್ತಿಯನ್ನು ಜೀವನ ಪರ್ಯಂತ ಭೋಗಿಸಿ  
ನಮ್ಮ ಅವಸಾನದ ಕಾಲದಲ್ಲಿ ಮಾರಿಕೊಳ್ಳಲು ಮತ್ತು ಯಾರ ಹೆಸರಿನಲ್ಲಿ  
ಯಾದರೂ ಮಾಡಲು ನಮಗೆ ತುಂಬ ಅಧಿಕಾರ ಇರುತ್ತದೆ. ಇದನ್ನು  
ಕೇಳಲು ಯಾರಿಗೂ ಅಧಿಕಾರ ಇರುವುದಿಲ್ಲ. 4) ನಮ್ಮ



ಮರಣಾನಂತರ ಉಳಿದ ಆಸ್ತಿಗೆ ಅಧಿಕಾರಾದವರು ಆದರಿಂದ ಬರುವ ಆದಾಯದಿಂದ ಶ್ರೀ ಹಳ್ಳದ ಚರಬಸವೇಶ್ವರ ತೋರಗದ್ದಿಗೆಯ ಸತ್ತಾತ್ಮ ಕಾರ್ಯಗಳಿಗೂ ಮತ್ತು ಸದಾ ದಾಸೋಗ ನಡೆಸಿಕೊಂಡು ಹೋಗತಕ್ಕದ್ದು. ಉಳಿದ ಈ ಆಸ್ತಿಯನ್ನು ಮಕ್ಕಳು ಭಾಗವಾಗಲಿ ಮಾರುವದಾಗಲಿ ಯಾರಿಗೂ ಅಧಿಕಾರ ಇರುವುದಿಲ್ಲ. ಒಂದು ವೇಳೆ ಇದರ ವಿರುದ್ಧ ನಡೆದಲ್ಲಿ ಮೂರು ಮಂದಿ ಮಕ್ಕಳಿಗೂ ಆಸ್ತಿಯ ಲೆಕ್ಕ ಪತ್ರ ಹಾಗೂ ಆಗುಹೋಗುಗಳನ್ನು ಕೇಳಲು ಕಡೆತನದ ಅಧಿಕಾರ ಇರುತ್ತದೆ. 5) ಮಕ್ಕಳು ಒಬ್ಬ ರಿಗೊಬ್ಬರು ನನ್ನ ಮರಣಾನಂತರ ಉಳಿದ ನನ್ನ ಆಸ್ತಿಯನ್ನು ಕಡೆತನದ ಬೆಳೆಸಿಕೊಂಡು ಶ್ರೀ ಹಳ್ಳದ ಚರಬಸವೇಶ್ವರನ ಸದಾ ಸೇವಕರಾಗಿ ಸೇವೆ ಸಲ್ಲಿಸ ಬೇಕೆಂದು ನನ್ನ ಸಂಪೂರ್ಣ ಆಸೆ.

ನೋಟ : ಇಂದಿನ ದಿನಾಂಕದಿಂದ ಯಾವ ತರಹದ ಸಾಲ ಲೇನಾ ದೇನಾ ನನ್ನ ಕಡೆ ಇರುವುದಿಲ್ಲ.

ಇತಿ.

ನಾಗಪ್ಪಾ ತಂದಿ ಚಂದಪ್ಪಾ ಅಲುನೂರ  
ತಾಲೂಕಾಃ ಶಹವೂರ(ಬಿ.ಗುಲಬರ್ಗಾ)

**24.** I have perused Ex.P16(a), on perusal of the same it is clear that, Ex.P16(a) is original Watni Patra executed by propositus Nagappa and his 03 sons by name Shivaraja, Basavaraja and Chandappa which reflects the joint family properties of propositus Nagappa and his 03 sons by name Shivaraja, Basavaraja and Chandappa, and partition among them in respect of said properties and the properties which



are fallen to the share of propositus Nagappa and his 03 sons by name Shivaraja, Basavaraja and Chandappa, the said partition reduced into writing on 02 bond paper each valued Rs.3/-, so, it is clear that, the partition took place between the propositus Nagappa and his 03 sons in respect of their joint family properties, same has been reduced into writing on Rs.06/- stamp paper and all the parties to the Watni Patra have put their signatures in the presence of 06 witnesses shown in Ex.P16(a).

**25.** There is a endorsement on backside of each bond paper, with seal, and with name of stamp vendor, in the seal put on back side of each bond paper it is mentioned Sl.No.1108, date of purchase of bond as 16.07.1983 the name of purchaser is shown as Nagappa S/o Chandappa Alnur R/o Shahapur, Tq: Shahapur, it is also mentioned in the endorsement as 03\*02 = Rs.6/-, name of the vendor shown as Sangappa, Amarappa Bukistagar Stamp Vendor JMFC court, Shahapur.



**26.** On careful scrutiny of Ex.P16(a) original unregistered Watni Patra it is clear that, joint family properties of propositus Nagappa and his 03 sons divided into 04 parts, one part fallen to the share of propositus Nagappa and remaining 03 parts are fallen to the share of his sons, Shivarappa, Basavaraja and Chandappa as extracted supra, and it is also not dispute between the parties that, said Nagappa died intestate.

**27.** Off-course, Ex.P16(a) is original Watni Patra is typed one, and it is also clear that, Survey numbers of joint family properties mentioned in hand writing and survey numbers of properties fallen to the shares of parties to Ex.P16(a) are also written in hand writing. Merely because of survey numbers are mentioned in hand writing in Ex.P16(a) it does not mean that, Ex.P16(a) is not believable documents. Because, so far as joint family of plaintiffs and defendants and propositus Nagappa are concerned there is no dispute,



but, this document can not be suspected for the reason that, on basis of Ex.P16(a) there was a mutation entry as per Ex.P1, this Ex.P1 is important document which proves the execution of Ex.P16(a) between the parties to the document. I would like to extract Ex.P1 mutation entry on basis of Ex.P16(a) which reads thus;

ವಾಟಣಿ ಪತ್ರದ ಪ್ರಕಾರ

ಅರ್ಜಿದಾರ ಶ್ರೀ ಶಿವರಾಜ ಹಾಗೂ ಬಸವರಾಜ ನಾಗಪ್ಪ ತಂ ಚಂದಪ್ಪ ಇವರ ತಮ್ಮ ಹೆಸರಲ್ಲಿ ವಾಟಣಿ ಪತ್ರದ ಪ್ರಕಾರ ತಮ್ಮ ತಮ್ಮ ಹೆಸರಲ್ಲಿ ವರ್ಗಾಹಿಸಲು ಅರ್ಜಿ ಕೊಟ್ಟಿರುತ್ತಾರೆ.

ಅರ್ಜಿಯ ಪ್ರಕಾರ ಗ್ರಾಮದಲ್ಲಿ ಮೂವತ್ತು ದಿವಸ ಮುದತಿನ ನೋಟಿಸನ್ನು ಜಾರಿ ಮಾಡಲಾಗಿದೆ.

Sd/-

20.04.84

ನೋಟಿಸ ಜಾರಿ ಮಾಡುವುದಕ್ಕಿಂತ ಮೊದಲೆ ತಕಾರರು ಅರ್ಜಿ ಬಂದಿರುತ್ತದೆ.

Sd/-

**28.** On careful scrutiny of Ex.P1 it is clear that, father of the plaintiffs and the present defendant No.1 has submitted the Watni patra Ex.P16(a), but, it was objected, on account of which, the said mutation entry is entered in objection registered No.283 and same has



been referred to Tahasildar office Shahapur for necessary order on the objection, Tahasildar Shahapur registered revenue case as REV/ROR/35-84-85 and same was disposed on 08.10.1984. On basis of order of Tahasildar Shahapur in the revenue proceedings there was a mutation entry as per Ex.P15. Ex.P15 mutation entry which reads thus;

ವರ್ಗ ಮುಬದಿಲ್ ರಿಜಿಸ್ಟರ್ ಗ್ರಾಮ: ಹಳಿಸಗರ, ತಾ: ಶಹಾಪುರ, ಪಟ್ಟದಾರನಾದ ಶ್ರೀ ನಾಗಪ್ಪ ತಂದೆ ಚಂದಪ್ಪ ಅಲಬನೂರ ಇದ್ದು ತನ್ನ ಮೂರರು ಮಕ್ಕಳಿಗೆ ವಟ್ಟಿ ಪತ್ರ ಬರೆದು ಕೊಟ್ಟಿರುತ್ತಾನೆ. ಪ.ಸಂ.283 ರಲ್ಲಿ ವಟ್ಟಿ ಪತ್ರ ಬರೆಯಲಾಗಿತ್ತು. ಸದರಿ ವಟ್ಟಿ ಪತ್ರಕ್ಕೆ ಹಿರಿಯ ಮಗನಾದ ಶಿವರಾಜ ತಂದೆ ನಾಗಪ್ಪ ಇವರು ತಕರಾರು ಮಾಡಿದ ಕಾರಣ ಪ.ನಂ.282 ಯನ್ನು ತಕರಾರು ರಿಜಿಸ್ಟರ್‌ನಲ್ಲಿ ಬರೆದು, ತಹಸೀಲ್ದಾರ್ ಕಾರ್ಯಾಲಯಕ್ಕೆ ಕಳುಹಿಸಲಾಗಿತ್ತು, ತಹಸೀಲ್ದಾರ್ ಶಹಾಪುರ ಇವರು ಆದೇಶ ಮಾಡಿ ವಟ್ಟಿ ಪತ್ರದ ಪ್ರಕಾರ ವರ್ಗಾವಣೆ ಮಾಡುವದಿಲ್ಲ ಮಾಡಲು ಆದೇಶ ಮಾಡಿದ್ದಾರೆ. ವರ್ಗಾವಣೆ ಆದೇಶ ನಂ.REV/R-R/35/84-85 dated 08.10.1984 ಇರುತ್ತದೆ.

1. ಸ.ನಂ.140/2 1-28 1-34 ಇದು ಶಿವರಾಜ ತಂದೆ ನಾಗಪ್ಪ ಇವನಿಗೆ ಬಂದಿರುತ್ತದೆ. 2.ಸ.ನಂ.401 9-4 14-31 ಸ.ನಂ.157 3-19 5-16 ಇವು ಶ್ರೀ ಚಂದಪ್ಪ ತಂದೆ ಅಮಲೂರ ಇವರ ಹೆಸರಿಗೆ ಮಾಡಲು ತಿಳಿಸಿದ್ದಾರೆ. 3. ಸ.ನಂ.552/3 3-10 ಸ.ನಂ.13/3 1-3, ಸ.ನಂ.136 0-08, 381/2 4-06 ಇವು ಶ್ರೀ ಬಸಪ್ಪ ತಂದೆ ನಾಗಪ್ಪ ಇವರ ಹೆಸರಿಗೆ ಬರೆದು ಕೊಟ್ಟಿರುತ್ತಾರೆ. ಕಾರಣ ಮೇಲಿನ ಆದೇಶದ ಪ್ರಕಾರ ವರ್ಗಾವಣೆ ಮಾಡಲಾಗಿದೆ.

Sd/-  
31.11.84



**29.** On careful scrutiny of Ex.P15 mutation entry extracted supra it is clear that, the Kather of the plaintiff objected Ex.D1, when Ex.D1 objected by the father of the plaintiffs, said Watni patra referred to Tahasildar Shahapur for necessary order objection, it is also clear from Ex.P15 mutation entry that, Tahasildar Shahapur passed the order not in accordance with Watni Patra Ex.P16(a), and shares of parties to Ex.P16(a) are not in accordance with Ex.P16(a). Ex.P15 mutation entry came into existence on 31.11.1984. So, when Tahasildar Shahapur passed the order as per Ex.P15 on the objection made by the father of the plaintiffs, the plaintiffs father is not satisfied with order of Tahasildar Shahapur, on account of which he challenged the same before the Assistant commissioner, when the proceedings before Assistant Commissioner is pending the father of the plaintiffs Shivaraj died. On account of which, said revenue proceedings discontinued, the present plaintiffs have filed suit OS



No.21/1994 for partition and separate possession of their 1/3rd share in the suit schedule properties as per Ex.P16(a), the suit properties shown in OS No.21/1994 are the same properties involved in the suit, even in the said suit the present plaintiffs filed suit for partition and separate possession on basis of Ex.P16 against the present defendants, the present defendant No.1 appeared and filed a written statement contending the same defence as taken in the present suit and the defendant No.1 relied on Ex.D1 as contended in the present suit and issues framed in the said suit. The present plaintiffs have produced certified copy of plaint, written statement of defendants, issues framed in the said suit and same are marked at Ex.P12 to 14, and said suit was dismissed for non prosecution.

**30.** On appreciation of Ex.P1, Ex.P15 mutation entries and Ex.P12 to 14 it is clear that, Ex.P16(a) original Watni patra is acted upon, on the other hand Ex.P16 (a) was submitted by the propositus Nagappa



before the revenue authority for necessary entries in the revenue records in respect of properties fallen to the shares of parties to Ex.P16(a) Watni patra. Further, there was proceedings before the revenue court on basis of objected document Ex.D1, thus, Ex.P1, 15 and order of Tahasildar Shahapur clearly proves that, Ex.P16(a) is acted upon and it is also clear from Ex.P1 and 15 that, the present defendant No.1 is not objected Ex.P16(a), instead, the father of the plaintiffs Shivaraja objected Ex.D1 when it is produced before the revenue authority for necessary entries on basis of Ex.D1. Thus, the facts reflected in Ex.P1 and 15 and on basis of which the Tahasildar Shahapur has passed the order, clearly proves that, Ex.P16(a) is acted upon and defendant No.1 herein not disputed Ex.P16(a), further it is clear from the appreciation of Ex.P1 and 15 and order of Tahasildar Shahapur it is clear that, the defendant No.1 produced Ex.D1 before the Tahasildar Shahapur and father of the plaintiffs objected Ex.D1, on basis of his



objection Tahasildar Shahapur passed the order as it could be seen from Ex.P1 and 15 extracted supra, same was challenged before deputy commissioner, meanwhile father of plaintiffs died.

**31.** As per the defendant No.1 there was a partition among his brother and propositus Nagappa in respect of their joint family properties, and same was reduced into writing as per Ex.D1. I have gone through the Ex.D1 which is also came into existence on 08.11.1983 between the same parties who are parties in Ex.P16(a) which is came into existence on 16.07.1983. Question before the court is if really Ex.D1 Watni patra came into existence between the same parties soonafter Ex.P16(a) than what prevents the defendant No.1 to produced before the Tahasildar Shahapur in the revenue proceedings registered on basis of objection filed by the plaintiffs father, further, the defendant No.1 did not raised any objection before the revenue authority and defendant No.1 did not produce filed



objection to Ex.P16(a) before the revenue authority, further defendant No.1 did not objected Ex.P16(a) before the revenue court by producing Ex.D1, because, Ex.D1 said to have been executed on 08.11.1983, and Ex.P1 and 15 are mutation entries entered in the year 1984 and same was objected by the plaintiffs father, on basis of which Tahasildar has passed the order, being aggrieved by the order of Tahasildar Shahapur the plaintiffs have filed OS No.21/1994, on Ex.P16(a), Ex.P16(a) believable document, because, it is acted upon and unchallenged.

**32.** The case of the defendant No.1 is that, though partition taken place between propositus Nagappa and his 03 sons in respect of their joint family properties but not as per Ex.P16(a), but, partition taken place between them in respect of their joint family properties as per Ex.D1 and suit properties are fallen to the share of defendant No.1, and further he contended that, the properties fallen to the share of plaintiffs father



and to the share of father of defendant No.2 to 5 under Ex.D1 have sold under registered sale deeds, i.e., after partition as per Ex.D1 said Shivaraj and Basavaraj and Chandappa sold their properties under sale deeds. Ex.D1 is not believable document for the reason that, from 1983 till today no revenue entries made on basis of Ex.D1, even there is no singal peace of document to show the existence of Ex.D1, and no entries made in the revenue records on basis of Ex.D1.

**33.** The second reason for not believing Ex.D1 is that, as per defendant No.1 there was earlier partition between propositus Nagappa and his sons, in order to make documentary evidence of said partition they have executed Ex.D1. Question before the court is that, when there is no pleadings in the written statement of defendant No.1 as to whether there was a oral partition and what are the properties fallen to the share of parties under oral partition, when oral partition took place, nothing in the pleadings, when there is no pleadings in



respect of oral partition and then how Ex.D1 came into existence. So, without their being any pleadings in respect of earlier partition Ex.D1 has no evidentiary value under the law because there is no pleadings about oral partition among the parties and said oral partition is reduced into writing as per Ex.D1. When there is no pleadings then the documentary evidence Ex.D1 has nothing to do with the facts stated in Ex.P16(a).

**34.** Now I would like to extract the recital of Ex.D1 which reads thus;

#### ಜ್ಞಾಪಕ ವಿಭಾಗ

1. ನಾಗಪ್ಪ ತಂದಿ ಚಂದಪ್ಪ ವಯಸ್ಸು 70 (2) ಶಿವರಾಜಪ್ಪ ವಯಸ್ಸು 45 (3) ಚಂದಪ್ಪ ವಯಸ್ಸು 40 (4) ಬಸವರಾಜಪ್ಪ 28 ಸರ್ವರ ಸಂದೆ ನಾಗಪ್ಪ ಅಲಬನೂರ ಉದ್ಯೋಗ ಒಕ್ಕಲುತನ ಸಾಃ ಶಹಾಪೂರ ಜಿಲ್ಲಾ ಕಲ್ಬುರ್ಗಿ, ಇವರ ಮಧ್ಯ ವಿಭಾಗ ಪತ್ರ.

ಮೇಲಾಸಿದ ನಂ.1 ಹಿಂದು ಅವಿಭಕ್ತ ಕುಟುಂಬದ ಮುಖ್ಯ ಸದಸ್ಯನಿದ್ದು ನಂ.2, 3 ಮತ್ತು 4 ನಂ.1 ರ ಖಾಸ ಮಕ್ಕಳಿದ್ದಾರೆ. ನಂ.1 ನ ಒಬ್ಬ ಹೆಂಡತಿಯು ಇದ್ದು ಇವರ ಮಧ್ಯ ವಿಶ್ರಾಜಿತೆ ಆಸ್ತಿ ಕೆಳಕಂಡಂತೆ ಇದ್ದು ಅವೆಲ್ಲವುಗಳು ಸಂಯುಕ್ತವಾಗಿ ಹಿಂದು ಅವಿಭಕ್ತ ಕುಟುಂಬದ ಆಸ್ತಿಯಿದ್ದು ಅವೆಲ್ಲವುಗಳು ಕೆಳಕಾಣಿಸಿದವರ ಹೆಸರಿನಿಂದ ಇದ್ದು ಸಂಯುಕ್ತವಾಗಿ ಸ್ವಾಧೀನಂದಾರರು ಮತ್ತು ಅನುಭೋಗದಾರರು ಆಗಿ ಅನುಭೋಗಿಸುತ್ತಿದ್ದಾರೆ.



**35.** The recital of Ex.D1 extracted supra does not speaks about previous partition as contended in the written statement of defendant No.1, and it also does not speaks about the facts that, in order to make the documentary evidence of previous oral partition Ex.D1 came into existence between the parties, there is no mentioning in Ex.D1 that, in view of the oral partition took place prior to Ex.D1 the Ex.D1 is came into existence. Ex.D1 further discloses the joint family properties of propositus Nagappa and his 03 sons, and said properties divided into 04 parts one is for the share of propositus Nagappa, second one is for the share of his son Shivaraj, third one is for the share of his son Chandappa and fourth one is for the share of his son Basavarajappa. The share of present defendant No.1 as per Ex.D1 shown as properties Sy.No.592/2 adm 03 acres 10 guntas, Sy.No.13/3 adm 01 acres 33 guntas, Sy.No.136 adm 08 guntas and Sy.No.381/1 adm 04 acres 06 guntas, and house No.5-96(new No.1-7-46).



The share of propositus Nagappa shown in Ex.D1 which reads thus;

ನಂಬರ 1 ನಾಗಪ್ಪ ತಂದಿ ಚಂದಪ್ಪ ಅಲಬನೂರ ಕುಟುಂಬದ ಮುಖ್ಯ ತನ್ನ ಉಪಜೀವನಕ್ಕಾಗಿ ಕಾದಿಟ್ಟು ಕೊಡು ತನ್ನ ಪಶ್ಚಾತ್ತ ಅಂದರೆ ತನ್ನ ಮರಣಾನಂತರ ಮುಂದೆ ತೋರಿಸಿದ ಸದಸ್ಯನಾದ ಚಿ.ಬಸವರಾಜಪ್ಪ ತಂದಿ ನಾಗಪ್ಪ ನಂ.4 ರ ಪಾಲಿಗೆ ಹೋಗತಕ್ಕದ್ದು.

ಸ.ನಂ.402 ಕ್ಷೇತ್ರ 13 ಗಂಟೆ ಕಂದಾಯ 51 ಪೈನೆ ಗ್ರಾಮ ಹಳಿಸಗರ ಮತ್ತು ಒಂದು ಮನೆನಂಬರ 5-96 (ಹೊಸ ನಂ.1-7-46) ಇದರಲ್ಲಿ ದಕ್ಷಿಣ ಭಾಗ ಗಿರಣಿ ಮತ್ತು ಉತ್ತರ ಭಾಗದ ದುಕಾನ ಎರಡು ಸೀಮಾಂತರ ಶಹಾಪುರವೇರ ಶಹಾಪುರ.

**36.** So far as plaintiff's case is that, suit properties are the land bearing Sy.No.381/2 old, New No.381/3 adm 04 acres 30 guntas as Hallisagar village, land Sy.No.136 (old) New No.136/2 adm 21 guntas of Hallisagar village, and Shop No.5-94 (old), as new No.10-71 situated at Muchigudda Shahapur, and flour mill situated over shop No.5-94 (old), new No.10-71, adm East-West 27 feet and North – South 15 feet, these are the suit properties as per the case of the plaintiff and as per Ex.P16(a) Watni patra relied on by the plaintiffs. As already appreciated Ex.P16(a) Watni patra



the properties fallen to the propositus Nagappa as his share as per Ex.P16(a) are extracted supra and same are the suit properties, Ex.P16(a) already appreciated.

**37.** Ex.D1 is against the pleading pleaded in written statement of defendant No.1 as there is pleading in the written statement that, there was a partition between the propositus and his son, after partition a family settlement deed has been executed on 08.11.1983 in the presence of witness. But, there is no pleading in the written statement the date, month and year on which the earlier partition took place. Further, Ex.D1 does not disclose the facts that, since there was a partition between the propositus Nagappa and his sons, and in order to make it documentary evidence the Ex.D1 came into existence. Even no date, month and year of oral partition found in the pleadings. Thus, Ex.D1 is not believable document and it can not be considered for any purpose neither for collateral purpose nor to prove the fact of partition as contended



in Ex.D1. Ex.D1 itself discloses two days of its execution, one is shown as 05.11.1983 and last para of Ex.D1 discloses 08.11.1983. In order to make it clear I would like to extract those relevant para which reads thus;

ಈ ಮೇಲಾಣಿಸಿದ ಹಂಚಿಕೆಯ ವಿವರಣೆಯ ಪ್ರಕಾರ ಅವರವರು ಪಾಲಿನ ಆಸ್ತಿಗಳನ್ನು ಅವರ ಸ್ವಾಧೀನಕ್ಕೆ ಕೊಟ್ಟು ಅವುಗಳನ್ನು ಅವರು ಅನುಭೋಗಿಸುತ್ತಾ ಬಂದಿದ್ದಾರೆ. ಈ ಭಾಗ ಪತ್ರವು ಶುಭದಿನವಾದ ದೀಪಾವಳಿಯ ಹಬ್ಬ ಅಂದರೆ ದಿನಾಂಕ: 05.11.1983 ರಂದು ಸ್ಥಳೀಯ ಪಂಚರ ಸಮಕ್ಷಮ ಜರುಗಲ್ಪಟ್ಟಿದೆ.

ಈ ಜ್ಞಾಪಕ ವಿಭಾಗ ಪತ್ರದ ಆಧಾರದ ಮೇಲೆ ತಮ್ಮ ತಮ್ಮ ಪಾಲಿಗೆ ಬಂದ ಆಸ್ತಿಗಳನ್ನು ತಮ್ಮ ತಮ್ಮ ಹೆಸರಿಗೆ ಸಂಬಂಧಪಟ್ಟ ಕಾರ್ಯಾಲಯಗಳಲ್ಲಿ ರುಜುವಾಗಿ ಕಾರ್ಯಾನುಸಾರ ವರ್ಗಾಯಿಸಿ ಕೊಳ್ಳಲು ಸಮರ್ಥರಿದ್ದಾರೆ. ಇದಕ್ಕೆ ಯಾರ ಅಕ್ಷೇಪ ಇರುವುದಿಲ್ಲ.

ಹೀಗೆಂದು ಸ್ಥಾನೀಯ ಪಂಚರ ಸಮಕ್ಷಮ ಈ ಜ್ಞಾಪಕ ವಿಭಾಗ ಪತ್ರ ಯಾವ ಒತ್ತಾಯ ವಿಲ್ಲದೇ ಸ್ಥಿತ್ಪ್ರಜ್ಞೆಯಿಂದ ಬರೆಯಿಸಿ ಓದಿ ತಿಳಿದು ಸಹಿ ಮಾಡಿದ ಜ್ಞಾಪಕ ಪತ್ರ ನಿಜವಿದೆ ದಿ: 08.11.83.

**38.** So, on careful scrutiny of the facts extracted supra from Ex.D1 it is clear that, as per the first para extracted supra Ex.D1 came into existence on Dipavali festival day i.e., on 05.11.1983 in the presence of local witness. At the same time, Ex.D1 discloses in the last para extracted supra that Ex.D1 came into existence in the presence of local witness without any force from



anybody, and parties to Ex.D1 put their signature after going through its contents as true on 08.11.83. The question before the court is Ex.D1 discloses two dates of its birth, which one has to believe, defendant No.1 does not disclosed as to why Ex.D1 discloses two dates. As per the written statement of defendant No.1 the family settlement in respect of earner partition between the plaintiffs father, defendant No.1 and father of defendant No.2 to 5 came into existence of 08.11.1983, but, Ex.D1 discloses that, the same is written on auspicious day of Dipavali festival on 05.11.1983 in the presence of local witness. Thus, it is clear that, the defendant No.1 has created Ex.D1 in order to grab the share of plaintiffs father in the suit properties. Further, the defendant No.1 shows his share in Ex.D1 Sy.No.381/2 adm 04 acres 06 guntas, but, the suit land bearing Sy.No.381/2 adm 04 acres 30 guntas. Thus, in view of the contents of Ex.D1 itself discloses that, Ex.D1 is not believable document for any purpose.



**39.** That apart, even as per defendant No.1, propositus Nagappa given share in Ex.D1 as extracted supra and said Nagappa died on 08.12.1989 as per the plaint, the date of death of Nagappa shown in plaint is not disputed. Question before the court is that, even assuming for the movement not admitted by the parties that, if partition taken place as Ex.D1 and share given to propositus Nagappa, the properties fallen to the share of Nagappa as per Ex.D1 those properties are not found that, the said Nagappa left his share as per Ex.D1. Defendant has not stated anything in the pleading, where about the properties fallen to the share of Nagappa as per Ex.D1. If really there was a partition as per Ex.D1 the properties fallen to the share of Nagappa as per Ex.D1 must available for partition to the plaintiffs and defendants. So, no properties left by the Nagappa as per Ex.D1. This clearly shows that, there is no partition between propositus Nagappa and his sons as per Ex.D1.



**40.** The defendant No.1 contended that, the plaintiffs father and father of defendant No.2 to 5 have taken their share in the joint family properties as per Ex.D1 and after partition they have sold their share to the purchasers, if that is the case then what prevents the defendant No.1 to produced the certified copy of sale deeds said to have been executed by father of the plaintiffs and father of the defendant No.2 to 5 in respect of their share to prove that, there was a partition as per Ex.D1. These facts clearly shows that, no partition took place as per Ex.D1 and Ex.D1 is created document.

**41.** To disbelieve the Ex.D1 for any purpose there are the reasons for disbelieve Ex.D1 that, Ex.D1 came in to existence as per defendant No.1 on 08.11.1983, from 08.11.1983 till today no single revenue entries came into existence on basis of Ex.D1, so, if really there was partition on basis of Ex.D1 definitely there would be revenue entries as per Ex.D1



in respect of shares of the parties to Ex.D1, but, no single entries made in the revenue records of joint family properties of plaintiffs and defendants on basis of Ex.D1 from 1983 till today, this clearly proves that, no partition took place as per Ex.D1 and neither it is acted upon nor given shares to the parties as contended. Even there is no explanation from defendant No.1 who relied on Ex.D1 as to why the partition entered in the revenue records of joint family properties of plaintiffs and defendants on basis of Ex.D1.

**42.** The settled position of law, so far as proof of partition among Hindu Undivided joint family members in respect of their ancestral and joint family properties is that, a partition of joint family properties can be effected orally, but, if a partition reduced into writing such as Watni Patra or Palu patti, it is generally required registration U/Sec.17(a)(b) of the Registration Act, if it creates or extinguishes rights in immovable properties worth Rs.100/- or more. An unregistered



Watni Patra is in admissibility to prove the title or the partition itself, but, it can be used for limited collateral purpose, the partition based on such unregistered Watni patra carry a presumption of truth but not conclusive proof.

**43.** Thus, in Hindu Joint family partition can be taken place both an oral and written process. The essence of valid partition is factual severance of the joint family status, demonstrated through separate possession, management and enjoyment of the family properties by deferent branches. Mere lack of registration of partition deed does not inherently nullify the partition if substantial evidence corroborates the separate administration of the properties.

**44.** In the present case, the relationship between the plaintiffs and defendants and their ancestors not in dispute, it is also not in dispute that, the joint family properties shown in Ex.P16(a) is not in dispute, because, the plaintiffs and defendant No.1 have



specifically contended about the joint family properties prior to partition, those joint family properties are not in dispute, the only dispute between the parties is that, the partition took place as per Ex.P16(a) according to the plaintiffs in respect of joint family properties, and as per the defendant No.1 partition took place as per Ex.D1. So, as already appreciated Ex.D1 and Ex.P16(a), on appreciation of oral and documentary evidence it is crystal clear that, joint family properties of the plaintiffs and defendants are not in joint possession and enjoyment of the plaintiffs and defendants is admitted facts. As appreciated supra oral and documentary evidence the plaintiffs have proved that partition took place between propositus Nagappa and his 03 sons in respect of joint family properties and after partition they are in separate possession and enjoyment of their respective shares. But, dispute is that, the joint family properties fallen to the share of propositus Nagappa, who is common ancestors of plaintiffs and defendants,



the said Nagappa died after partition intestate and left his properties fallen to his share in the partition as per Ex.P16(a). So, Naturally when father left his properties his sons succeeded to the properties left by the father. It is also clear from the material placed before the court and on undisputed facts that, the joint family properties of the plaintiffs and defendants are already divided and they are in separate possession and enjoyment of their respective share, the only facts is that, since propositus Nagappa died intestate by leaving his properties hence the dispute between the plaintiffs and defendants is in respect of share of Nagappa. Thus, in the present case, on basis of oral and documentary evidence, this court observed and appreciated that over decades, the branches in question maintained separate possession of their respective shares, cultivated lands independently, and managed the properties in their names. Thus, the conduct of parties on basis of Ex.P16(a) amounted to an implicit acknowledgment and practical implementation



of partition on basis of unregistered Watni patra Ex.P16(a) renders the unregistered deed is sufficient evidence to prove the partition as per Ex.P16(a). In support of my opinion I relied on the decision of the **Hon'ble Apex court passed in case of K.G Shivalingappa (Dead) by Lrs and others V/s G.S Eshwarappa and others.** In the said judgment the Hon'ble Apex court was pleased to held that, the paramount importance of practical administration and factual evidence in determining the existence of a partition within Hindu Joint family properties. While procedural requirements like registration of partition deeds are significant, they would not overshadow the evidentiary value of longstanding separate possession and management of properties shares.

**45.** On careful scrutiny of oral and documentary evidence and re-appreciation of oral and documentary evidence of both the parties this court is opinion with the reasoning assigned supra and relying on the



decision referred supra that, the plaintiffs have proved the facts that, the partition took place between propositus Nagappa and his 03 sons in respect of their joint family properties as per Ex.P16(a) and they are in separate possession and enjoyment of their respective share from 1983, after partition the propositus Nagappa died intestate and the father of the plaintiffs, defendant No.1 and father of defendant No.2 to 5 are being sons of deceased Nagappa and they are succeeded to the suit properties left by Nagappa.

**46.** Off-course, there are some contradictions in the cross-examination of PW1 in respect of Ex.P16(a) and Ex.D1, those minor oral evidences against documentary evidence would not affect the credibility of the existence of partition between propositus Nagappa and his 03 sons in respect of their joint family properties as per Ex.P16(a), because of undisputed facts of relationship between the parties, undisputed facts of nature of joint family properties, undisputed fact of joint



family properties of plaintiffs and defendants are already divided among them. The only disputed fact is share of propositus Nagappa who died intestate. Hence the oral evidence against documentary evidence is not sufficient to suspect the existence of partition as per Ex.P16(a). Hence I answer point No.1 & 3 in the **Affirmative** and point No.2 in the **Negative**.

**47. POINT NO.4:** It is specific case of the plaintiffs that, the propositus Nagappa died intestate after partition leaving the suit properties which are fallen to his share in the partition took place as per Ex.P16(a). It is settled position of law that, the suit for partition of Hindu joint family properties generally must be filed within 12 years from the date when the plaintiffs right to share is denied or when joint possession is specifically excluded. Further, a coparceners have right to demand partition at any time in respect of ancestral and joint family properties. In the case on hand, the propositus Nagappa died intestate on



08.12.1989 after partition and suit properties are fallen to the share of Nagappa in the partition. In respect of the properties left by propositus the present plaintiffs have filed suit OS No.21/1994 for the same reliefs, in respect of same properties on basis of same partition deed Ex.P16(a), but, it was dismissed for default on 08.07.1996, and thereafter, the plaintiffs came to know that, the defendant No.1 is selling suit properties left by propositus Nagappa without giving plaintiffs share in the suit properties, hence the plaintiffs have approached and enquired with defendant No.1 and 6 on 01.10.2013 about selling the plots, but, the defendant No.1 and 6 denied to give the share of the plaintiffs in the suit properties hence the plaintiffs have filed the suit. The cause of action arose on 01.10.2013 when defendants refused to give the shares of the plaintiffs in the suit schedule properties. It is well settled law that, when ancestral and joint family properties kept undivided between the joint family members than a joint family



member can demand his share in the joint family properties, if his share is denied from the date of denial the cause of action arose. Hence, in view of the settled position of law in respect of limitation, in respect of suit for partition and separate possession of ancestral and Hindu Undivided Joint family properties, without discussing much on this points I hold that, suit filed by the plaintiffs is in time, hence, I answer point No.4 in the **Negative**.

**48. POINT NO.5:** The defendant No.1 has taken defence in the written statement that, the suit filed by the plaintiffs is hit by doctrine of res-judicata as the plaintiffs have filed suit OS No.21/1994 against the same defendants, in respect of same properties, in respect of same reliefs sought in the present plaint, and said suit dismissed. Off-course, the plaintiffs have filed suit OS No.21/1994 against the defendants, in respect of suit schedule properties for the present reliefs on basis of Ex.P16(a), the said suit is dismissed for default,



without determining issues involved in the said suit on merits. Hence the doctrine of res-judicata is not applicable to the case on hand, hence, I answer point No.5 in the **Negative**.

**49. POINT NO.6:** On careful scrutiny of oral and documentary evidence led by both the parties and on re-appreciation of the same as appreciated supra, it is clear that, the plaintiffs have proved their case and they proved that, they got legitimate share in the suit properties as prayed in the plaint and they are entitle for the reliefs sought in the plaint. Thus, looking to the undisputed facts and oral and documentary evidence and revenue records appreciated supra it is clear that, the trial court failed to appreciate the oral and documentary evidence led by both the parties with settled position of law and came to wrong conclusion that, the plaintiffs failed to prove that, they got share in the suit properties which requires the interference of this court as appreciated supra oral and documentary



evidence led by both the parties, Hence the judgment and decree under challenge is liable to set-aside and suit of the plaintiffs is liable to be decreed. I answer point No.6 in the **Affirmative**.

**50. POINT NO.7:** In view of the discussion made on point No.1 to 6, I proceed to pass the following;

**ORDER**

Regular Appeal preferred  
U/Sec.96 R/w order 41 Rule 1 of CPC,  
by the appellants/Plaintiffs, is hereby  
allowed.

Consequently, the judgment and decree under challenge, passed by the Ld Senior Civil Judge and JMFC Shahapur, in OS No.11/2014, dated 04.07.2018 is hereby set-aside, and consequently, the suit of the plaintiffs are hereby decreed as prayed for, and the plaintiffs are entitle for separate



possession of 1/3rd share in the suit  
schedule properties.

Looking to the relationship  
between the parties the plaintiffs and  
defendants shall bear the cost.

Draw decree accordingly.

Office is directed to send TCR to  
the trial court with copy of the  
judgment.

(Dictated to the Stenographer-III directly on  
computer, transcript computerized by her, corrected, initialed and then  
pronounced by me in the open court, on this the 13<sup>th</sup> day of March –  
2026)

**(Yamanappa Bammanagi)**  
**(II nd Addl. District and Sessions Judge**  
**Yadgir, Sitting at Shorapur)**