

KAVP020012972019



Presented on : 07-06-2019
Registered on : 10-06-2019
Decided on : 01-09-2025
Duration;06 years,02 months,24 days

IN THE COURT OF IV ADDITIONAL SENIOR CIVIL JUDGE &

JMFC, VIJAYAPURA

:PRESENT:

Sri. SAMEER KOLLI., B.A.L., LL.B.,

IV Addl. Senior Civil Judge and JMFC, Vijayapura

Dated this the 01st day of September 2025

:ORIGINAL SUIT No.98/2019:

PLAINTIFF/s:

1. **Gurappa S/o Lokappa Indi.**
Age: 67 years, Occ: Retired Teacher,
R/o Gokul Nagar, Belagavi.

(By Sri. S.V.J, Adv for plaintiff)

V/s

DEFENDANT/S:

1. **Tippanna s/o Lokappa Indi.**
Age: 71 years, Occ;agri,
R/o.Nagathan, Tq: Vijayapura.
2. **Bhimaraya s/o Lokappa indi.**
Age: 70 years, Occ:Agri,
R/o. Nagathan, Tq: Vijayapura.

3. **Sharanappa s/o Lokappa Indi.**
Age:65 years, Occ:Agri,
R/o.Nagathan, Tq: Vijayapura.
4. **Mallappa s/o Lokappa Indi.**
Age: 62 years, Occ: Retired lecturer,
R/o.2-911/15/2/27 Vibuti Nagar,
Rajapur, Kalaburgi.
5. **Chandram s/o Lokappa Indi.**
Age: 57 years, Occ: Service,
R/o.Marthalli, Begaluru.
6. **Smt.Kallawwa W/o Nagappa Shirakanahalli.**
Age: 76 years, Occ: H.H.work,
R/o.Nagathan, Tq: Vijayapura.
7. **Shivubai w/o Mahadev Sungatyal.**
Age: 76 years, Occ: H.H.work,,
R/o.Nagathan, Tq: Vijayapura.
- 7A. **Mahadev s/o Shivaningappa Sungatyal.**
Age- 80 years, Occ: Nil,
R/o. Halagunaki, Tq: Indi,
Dist- Vijayapura.
- 7B. **Siddu @ Siddappa s/o Mahadev Sungatyal.**
Age- 48 years, Occ: Kirana business,
R/o. Halagunaki, Tq: Indi,
Dist- Vijayapura.
- 7C. **Shankar s/o Mahadev Sungatyal.**
Age- 45 years, Occ: agri,
R/o. Halagunaki, Tq: Indi,
Dist- Vijayapura.
- 7D. **Shivaningappa s/o Mahadev Sungatyal.**
Age- 48 years, Occ: Siddeshwar high school teacher,
R/o. Horti, Tq: Indi, Dist- Vijayapura.

(By Sri. S.K.H, Adv. for Deft No.1)
(By Sri. R.B.P, Adv. for Deft No.3)
(By Sri. S.N.S, Adv. for Deft No.4)
(Deft No.2,5,7(a to d) placed exparte)

Date of institution of the suit	07-06-2019		
Nature of the suit	Relief of partition and separate possession.		
Date of the commencement of recording of the evidence	30.01.2023		
Date on which judgment was pronounced	01.09.2025		
Total Duration	Year/s	Month/s	Day/s
	06	02	24

**IV Additional Senior Civil Judge
& JMFC, Vijayapura.**

:J U D G M E N T:

This suit by the plaintiff is filed seeking the relief of partition and separate possession claiming 1/7th share in the suit properties.

2. Brief facts of the plaint in a nutshell are as under:-

There are three suit schedule properties which are stated thus:

- 1) Land Sy. No.512/1A measuring 3 acres.**
- 2) Land Sy.No.512/1B measuring 03 acres.**
- 3) Land Sy.No.512/1C measuring 05 acres.**

All the suit properties are situated at Nagathan village of Vijayapura Taluka.

2.1. The plaintiff and defendants are coparceners. One Mr. Lokappa S/o Tippanna Indi is the propositus and he died on

05.07.1994 and he had a wife by name Smt. Nandawwa who has also died 20 years ago. The plaintiff and defendants are the children of the propositus and Smt. Nandawwa. It is pleaded that, as on the date of death of propositus Lokappa Indi, RS No.512/1 was standing in his name and after his death, the names of his wife and children came to be entered in the revenue records as per Mutation Entry bearing No.8200 of Nagathan village certified on 22.02.1995. The plaintiff was working as a teacher in Kendriya Vidyalaya, Belagavi since 1983 and he retired in the year 2013. Prior to his appointment to Kendriya Vidyalaya, the plaintiff was working as a teacher in S.S High School, Vijayapura and whereas, the defendant No.4 was working as a lecturer in Sharanabasappa Appa College, Kalaburgi and so also defendant No.5 is working in ISRO. The defendant No.6 and 7 are residing in the house of their husband. The defendant No.1 to 3 are looking after the suit properties after death of propositus Lokappa and defendant No.1 being the eldest son of the propositus started to act as karta of the joint family consisting of himself, his brothers and sisters in respect of suit properties. A bore-well has been dug in the suit property.

2.2. It is further pleaded that, defendant No.1 to 3 started to deny rights of plaintiff in the suit properties claiming that they are the absolute owners of the suit properties and thereafter, the

plaintiff verified the revenue records and after verification of ME.No.8202 he came to know that a partition has been effected in RS.No. 512/1 in which RS.No. 512/1A measuring 3 acres has fallen to the share of defendant No.2, RS.No.512/1B measuring 3 acres has fallen to the share of defendant No.1 and RS.No. 512/1C measuring 05 acres has fallen to the share of defendant No.3. It is claimed that the plaintiff is not a party to the alleged partition and the defendant No.1 to 3 taking advantage of the absence of the plaintiff and other defendants have got certified the mutation entry. The plaintiff claims that no partition has taken place till today and even documents in respect of RS.No. 448 of Nagathan village are also created. The plaintiff had challenged the same by filing a suit before learned Prl. Civil Judge, Vijayapura and the matter was amicably settled. As the defendants No.1 to 3 have denied share of the plaintiff, thus, in the light of background, the captioned suit is filed.

Defence of defendant No.3:

3. Defendant No.3 has entered appearance and has filed written statement admitting the relationship and that RS.No.512/1 was standing in the name of propositus Lokappa till his death on 05.07.1994 and after his death, name of plaintiff and the defendants came to be effected as per ME.No.8200 on 15.01.1995. By way of substantial defence it is contended that,

already a partition has taken place which was effected by Lokappa on 06.05.1996 as per ME.No.1068 and by virtue of the said partition the plaintiff and defendant No.1 to 5 are in possession and enjoyment of their respective shares. Land measuring 3 acres 31 guntas in Sy.No. 448 and land measuring 7 acres in Sy.No.412 have been given to the share of plaintiff and they are renumbered as Sy.No.448/2 and 412/5 as per ME.No.7313 dated 03.11.1997. The plaintiff has sold Sy.No. 412/4 measuring 7 acres under a registered sale deed to one Mr. Nagappa Manegol on 18.07.1994 and subsequently, he has sold 03 acres 36 guntas in Sy.No.448/4 to one Mr. Subhash Pattar under registered sale deed dated 23.01.2014 and therefore, the plaintiff is not entitled for any share. Thus, defendant No.3 has sought to dismiss the suit.

4. The defendant No.1 and 4 though have entered appearance, they have not filed written statement and whereas, defendant No.2,3 and 7A to D have not entered appearance and thus, they are placed exparte.

5. ***Based on the rival pleadings, my predecessor in office has framed the following issues:***

:I S S U E S:

1. *Whether the plaintiff proves that suit properties*

are ancestral joint family properties himself and defendants?

2. *Whether the defendant No.3 proves that during the life time of their father Lokappa he has effected oral partition dated 06-05-1986 between the plaintiff and defendant as contended in their written statement?*

3. *Whether plaintiff is entitled for 1/7th share as prayed in the plaint?*

4. *What order or decree?*

6. In order to prove his case, plaintiff is examined as PW.1 and got marked 11 documents at Ex.P.1 to P.11 and thereby closed the side. In rebuttal, defendant No.3 is examined as DW.1 and he has got marked 11 documents at Ex.D-1 to D-11 and defendant No.1 is examined as DW.2 and thereby closed the side.

7. Heard the learned counsel for the respective parties.

8. Scrutinized the oral and documentary evidence placed on record.

9. ***My findings to the above issues are as follows:***

Issue No.1 : In the Affirmative

Issue No.2 : In the Affirmative

Issue No.3 : Partly in the Affirmative

Issue No.4 : As per final order

for the following:

:R E A S O N S:

10. **Issue No.1 and 2:** As both the issues are inter related to each other in order to avoid repetitions of facts and evidence they are taken up for together discussion.

Documents produced by plaintiff:

10.1. EX.P.1 to 3 are the RTC extracts. Ex.P.4 is the death certificate of Lokappa. ExP.5 is the certified copy of ME.No.8200. ExP.6 to 8 are the mannual RTC extracts. ExP.9 is the certified copy of MR.No.T141/14-15. ExP.10 is the certified copy of MR.No.T111/14-15 and ExP.11 is the report.

Evidence of plaintiff:

11. PW.1 has filed his examination- in- chief by way of affidavit reiterating the contents of plaint averments. He is fully cross-examined by the counsel for defendants.

Documents produced by defendants:

12. Ex.D-1 is the certified copy of ME.No.7068. Ex.D-2 is the certified copy of ME.No.7313. Ex.D-3 is the certified copy of ME.No.8200. Ex.D-4 is the certified copy of ME.No.8202. Ex.D-5 is the certified copy of sale deed. Ex.D-6 is the certified copy of digital sale deed. Ex.D-7 is the certified copy of ME.No.7203. Ex.D-8 is the certified copy of ME.NO.9115. Ex.D-9 is the Affidavit of translator. Ex.D-10 is the certified copy of

compromise petition in OS.No. 323/13 and Ex.D-11 is the certified copy of compromise decree in OS.No. 323/13.

Evidence of defendants:

13. DW.1 has filed his examination-in-chief by way of affidavit reiterating the contents of his written statement. He has been fully cross-examined by the learned counsel for plaintiff.

14. DW.2 Tippanna Indi has filed his examination-in-chief by way of affidavit and he has deposed that, during the life time of his father in the year 1986 a partition has taken place between plaintiff and defendants and accordingly, all of them are enjoying their share along with possession. He has deposed that, the plaintiff has been given 03 acre 31 guntas in Sy.No.448 and 07 acres in Sy.No.412 which is renumbered as Sy.No.412/4. The plaintiff has sold 03 acre 36 guntas allotted in Sy.No.448/4 in favour of Mr.Subhash Pattar in the year 2013 and as regards suit properties are concerned they have been allotted to defendant No.1 to 3 in presence of their mother and the plaintiff along with other defendants. He has been fully cross-examined by the learned counsel for plaintiff.

Submissions:

15. The learned counsel for the plaintiff has contended during the course of his arguments that, the suit schedule properties were standing in the name of propositus Lokappa till

his death and no partition has taken place in respect of the suit properties. As regards, the earlier partition is concerned, though the plaintiff was given two properties but, defendant No.3 made the plaintiff to sell those properties and in that view, the plaintiff has sold the said properties. He further contended that, the plaintiff is having 1/7th share in the suit schedule properties which were not the subject matter of earlier partition of the year 1986. He further contended that, the documents produced by the defendants itself goes to show that, the suit properties were not included in the earlier partition and EX.D.4 which is ME.No.8202 has been created by the defendants in absence of the plaintiff. Thus, he has sought to decree the suit and award 1/7th share to the plaintiff in the suit properties.

16. Per contra, learned counsel for the defendant No.3 during the course of his arguments contended that, suit schedule properties are not the ancestral joint family properties. He further contended that, in the year 1995 a partition has taken place and in the said partition the suit properties have been allotted to the share of defendant No.1 to 3 which could be made out on perusal of Ex.D.4. As regards, the share of plaintiff is concerned, he has relied upon Ex.D.2 and submitted that the plaintiff has already been allotted his share as per partition dated 06.06.1986 and he has been allotted Sy.No. 412/4 and 448/2 and the said fact is

admitted by PW.1 in his cross-examination. He further contended that, when the share of plaintiff has already been given, again giving share in the suit properties does not arise and the suit properties were allotted to the share of defendant No.1 to 3 in presence of the plaintiff and other defendants and the plaintiff has consented for the same. Thus, he has sought to dismiss the suit.

Analysis:

17. Having heard the learned counsel for the respective parties, I have bestowed my thoughtful consideration to the rival contentions and also to the oral and documentary evidence placed on record.

18. At the outset, it is pertinent to note that, by virtue of Ex.D.1 which is Mutation Entry bearing No.7068 discloses that, on 06.06.1986 a partition has taken place and in the said partition Sy.No.412/4 measuring 07 acres and Sy.No.448/2 measuring 3 acres 31 guntas have fallen to the share of plaintiff herein and the said fact has been admitted by PW.1 in his cross-examination.

19. PW.1 in his cross-examination has unequivocally admitted that, during the life time of his father in the year 1986 some of the joint family properties were effected partition and in the said partition the plaintiff has been awarded Sy.No.412/4

and Sy.No.448/2 measuring 07 acres and 03 acre 31 guntas respectively and whereas, defendant No.1 has been allotted Sy.No.412/6 measuring 05 acres, defendant No.2 is allotted Sy.No. 412/5 measuring 05 acres, defendant No.3 has been allotted Sy.No. 412/7 and 448/4 measuring 3 acres 26 guntas and 3 acre 30 guntas respectively. The defendant No.4 has been allotted with Sy.No.412/2 and 448/3 measuring 3 acre 06 guntas and 03 acres 20 guntas respectively and finally, defendant No.5 has been allotted to Sy.No.412/3 and 448/1 measuring 3 acre 04 guntas and 07 acres 08 guntas respectively.

20. It is pertinent to note that, the plaintiff and defendant No.1 to 5 have been allotted their shares in the partition dated 06.06.1986 and the daughters of the propositus who are defendant No.6 and deceased defendant No.7 have not been allotted with any share in any of the properties of partition dated 06.06.1986.

21. It is significant to note that, the suit properties were not the subject matter of partition of the year 1986 which could be made out on perusal of Ex.D.1. The plaintiff claims that the partition of the year 1995 vide Ex.D.4 was entered in his absence. In this context, it is useful to go through the cross-examination of DW.1 in which he has unequivocally admitted that, no notice was issued to the plaintiff prior to the entry

recorded in Ex.D.4 and there are no documents with the defendants to show that the plaintiff has consented for partition dated 20.01.1995. The above admissions of DW.1 would clearly reveal that, the plaintiff was not having any knowledge of the alleged partition dated 20.01.1995 vide Ex.D.4.

22. Added to the above, DW.1 and 2 have clearly admitted that, Sy.No.512/1 measuring 11 acres stood in the name of their father. When the above property stood in the name of propositus and the same having not been included in the partition dated 06.06.1986, the said property has not been partitioned and the plaintiff being the son of the propositus Lokappa is entitled for a share in the suit properties.

23. As discussed above, two properties were given to the share of the plaintiff in Sy.No. 412/4 and Sy.No.448/2 and out of the said properties, the plaintiff vide Ex.D.5 which is certified copy of registered sale deed dated 18.07.1994 has sold 07 acres and 11 guntas of land in RS.No.412/4 in favour of Mr.Nagappa Manegol for sale consideration of Rs.42,000/- and this fact does not dis-entitle the plaintiff from claiming his legitimate share in the suit properties.

24. When the notice of Mutation Entry bearing No. 8202 vide Ex.D.4 was not issued to the plaintiff and the defendants having not produced any documents to show that, the plaintiff

had given consent to effect partition on 20.01.1995, in my considered view, the said partition was entered in to by defendant No.1 to 3 behind the back of the plaintiff and without his knowledge and in that view, the said mutation entry does not bind upon the share of plaintiff in suit properties.

25. It is relevant to note that, the alleged partition vide Ex.D.4 has taken place only by virtue of a mutation entry and the said partition is not registered. In this context, it is useful to refer a decision of **Hon'ble Apex Court in the case of K. Arumuga Velaiah vs P.R. Ramasamy and another, reported in 2022 LiveLaw (SC) 92** has held in para No.24 as under;

"24. Having regard to the aforesaid provision of law it can be safely concluded that the said award was a mere arrangement to divide the properties in future by metes and bounds as distinguished from an actual deed of partition under which there is not only a severance of status but also division of joint family properties by metes and bounds in specific properties. Hence, it was exempted from registration under section 17 (2) (v) of the Act. A document of partition which provides for effectuating a division of properties in future would be exempt from registration under section 17 (2) (v). The test in such a case is whether the document itself creates a right to obtain another document of title. If a document does not by itself create a right or interest in immovable property, but

merely creates a right to obtain another document, which will, when executed create a right in the person claiming relief, the former document does not require registration and is accordingly admissible in evidence".

26. It is also useful to refer a decision of **Hon'ble High Court of Karnataka in the case of Shekhar vs Manikappa reported in 2023 (3) KCCR 2566** in which the Hon'ble High Court of Karnataka has held that,

" The mutation entries cannot be a proof of partition. It is settled law that cessation of the commonality is not conclusive proof of partition, merely by the reason that the members are separated in food and residence for their convenience and separate residences at different places due to service or otherwise does not show the factum of partition".

27. A plain reading of both decisions of Hon'ble Apex Court and Hon'ble High Court of Karnataka referred supra would make it manifestly clear that, a partition which creates rights in an immovable property requires compulsory registration and mere entry in the revenue records cannot form basis for partition. The above decisions are aptly applicable to the facts on hand.

28. The learned counsel for defendant No.3 has relied upon a decision of **Hon'ble Apex Court in the case of Kale and**

others vs. Deputy Director of Consolidation and others, reported in AIR 1976 SC 807 in which the Hon'ble Apex Court has held that, *"An oral family arrangement does not require registration. If the terms are written down, registration is needed only if the document itself creates or extinguishes rights in the property, not if its merely a memorandum of a previously made arrangements for record or court information"*.

29. He has also relied upon another decision of **Hon'ble Apex Court in the case of Ravinder Kaur Grewal and others vs. Manjit Kaur and others, reported in AIR 2020 SC 3799** in which also the Hon'ble Apex Court has held that, *"A memorandum of family settlement which does not create right by itself requires no registration. It is further held that a document which creates a right in favour of a person in an immovable property in which he has no pre-existing right, in that event registration is required"*.

30. Lastly, he has relied upon a decision of **Hon'ble High Court of Bombay at Nagpur Bench reported in (2009) 3 AIR Bombay 794**, which also deals with the fact regarding registration of partition in which the Hon'ble High Court of Bombay has relied upon the decision of Hon'ble Apex Court in the case of Kale and others vs. Deputy Director of Consolidation and others.

31. In the case on hand, a perusal of Ex.D.4 clearly reveals that, it is not a family arrangements or a settlement as clearly indicates that, RS.No.512/1 has been divided amongst defendant No.1 to 3 and sub-division has also taken place by which RS.No.512/1 to 512/3 have been allotted to them. This clearly shows that, there is creation of right in favour of defendant No.1 to 3 in respect of the suit properties. Thus, with highest respect to the law laid down in the above decisions, they do not come to the rescue of the defendant No.3.

32. Though the partition has taken place on 06.06.1986 vide Ex.D.1 between plaintiff and defendants, the said partition was an oral partition as admitted by the defendants and it is already acted upon. As regards, partition dated 20.01.1995 is concerned nowhere it is claimed that it is an oral partition and more particularly the plaintiff was not a party to the said partition and in that view, I am of the considered view that, the plaintiff has established that suit schedule properties are ancestral joint family properties and though, the partition dated 06.06.1986 has taken place, it is necessary to note that the suit properties were not subject matter of the said partition. Considering all the above, the plaintiff is entitled for share in the suit properties. ***Thus, I answer issue No.1 and 2 in the Affirmative.***

33. **Issue No.3:** The propositus Lokappa is survived by plaintiff and defendants No.1 to 7 as his legal heirs. The mother of plaintiff and defendants Smt. Nandawwa is no more. Though, it is stated in Ex.D.4 that the daughters who are defendant No.6 and deceased defendant No.7 have relinquished their rights in favour of their brothers in the suit properties, it is pertinent to note that, the said relinquishment has not taken place under a registered document and thus, it has no sanctity in the eyes of law.

34. The daughters who are coparceners by birth by virtue of amendment to section 6 of the Hindu Succession Act, they are also entitled for equal share in the suit properties on par with that of sons. Thus, considering all the above, the plaintiff is entitled for 1/8th share in the suit properties and defendant No.1 to 6 are entitled for 1/8th share each and whereas, defendant No.7A to D are together entitled for 1/8th share. ***Thus, I answer issue No.3 partly in the Affirmative.***

CONCLUSION:

35. **ISSUE NO.4:** In view of my discussion of issue Nos.1 to 3, following order is passed:

:O R D E R:

Suit of the plaintiff is hereby partly decreed with costs.

The plaintiff is entitled for 1/8th share in the suit properties.

The defendant No.1 to 6 are entitled for 1/8th share each and whereas, defendant No.7 A to D are together entitled for 1/8th share in the suit properties.

Draw preliminary decree accordingly.

In view of law laid down by Hon'ble Apex Court in the case of Kattukandi Edathil Krishanan and another vs Kattukandi Edathil Valsan and others, reported in (2022) 16 SCC 71, office is directed to register the final decree proceedings in respect of preliminary decree passed in this suit.

(Dictated to the stenographer directly on computer, typed by her, revised the script, corrected, signed and then pronounced by me in the Open Court on this the **1st day of September 2025**)

(Sameer Kolli)
IV Addl.Senior Civil Judge
and JMFC, Vijayapura

:ANNEXURES:

Witnesses examined for plaintiff:

PW-1 : Gurappa L. Indi.

Documents exhibited for plaintiff:

Ex.P.1-3 : RTC extracts.

Ex.P.4 : Death certificate of Lokappa.

ExP.5 : Certified copy of ME.No.8200.

ExP.6-8 : Mannual RTC extracts.

- ExP.9 : Certified copy of MR.No.T141/14-15.
ExP.10 : Certified copy of MR.No.T111/14-15.
ExP.11 : Report.

Witnesses examined for defendants:

- DW.1 : Sharanappa L Indi.
DW.2 : Tippanna L Indi.

Documents exhibited for defendants:

- Ex.D-1 : Certified copy of ME.No.7068.
Ex.D-2 : Certified copy of ME.No.7313.
Ex.D-3 : Certified copy of ME.No.8200.
Ex.D-4 : Certified copy of ME.No.8202.
Ex.D-5 : Certified copy of sale deed.
Ex.D-6 : Certified copy of digital sale deed.
Ex.D-7 : Certified copy of ME.No.7203.
Ex.D-8 : Certified copy of ME.No.9115.
Ex.D-9 : Affidavit of translator.
Ex.D-10 : Certified copy of compromise petition
in OS.No. 323/13.
Ex.D-11 : Certified copy of compromise decree
in OS.No. 323/13.

***IV Addl.Sr. Civil Judge and JMFC,
Vijayapura.***