

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

Present: Smt. Reshma K. Goni,

B.A.,LL.M.
Sr. Civil Judge & JMFC Banahatti.

DATED: ON THIS THE 29th DAY OF JANUARY 2020

O.S.No.6/2018

Plaintiff : 1) Basappa S/o Ramappa Uppar Dayappagol
Age: 55 years, Occ: Agriculture
R/o. Jagadal, Tq: Jamakhandi
Now residing at Kamaladinni Tq: Gokak

(By : Sri. B.P.P./D.S.P. Advocates)

V/s

Defendants: 1) Bhimappa S/o Ramappa Uppar @ Dayappagol
Age: 60 years, Occ: Agriculture
R/o. Jagadal, Tq. Jamakhandi

2) Balappa S/o Ramappa Uppar @Dayappagol
Age: 62 years, Occ: Agriculture
R/o. Jagadal, Tq. Jamakhandi

3) Mahadevi W/o Shrimant Uppar Dayappagol
Since dead by his L.R's
(Amendment carried out as per order on memo dated : 27.08.2019)

4) Vittal S/o Shrimant Uppar Dayappagol
Age: 22 years, Occ: Agriculture
R/o. Adihudi, Tq. Jamakhandi

5) Ramappa S/o Shrimant Uppar Dayappagol
Age: 19 years, Occ: Agriculture
R/o. Adihudi, Tq. Jamakhandi

6) Neelavva W/o Shrimant Uppar @ Dayappagol
Age: 45 years, Occ: Agriculture & Household
R/o. Jagadal, TQ : Jamkhandi.

7) Lakkawwa D/o Shrimant Uppar @ Dayappagol
Age: 20 years, Occ: Agriculture & Household
R/o. Jagadal, TQ : Jamkhandi.

8) Laxmi D/o Shrimant Uppar Dayappagol
Age: 16 years, Occ: Student
R/o. Jagadal, Tq. Jamakhandi
(Since minor R/by her natural mother
Deft.No.6 as a minor guardian)

- 9) Kadappa S/o Ramappa Uppar Dayappagol
Age: 45 years, Occ: Agriculture
R/o. Jagadal, Tq. Jamakhandi
- 10] Rukmavva W/o Mahadevappa Nilannar
Age: 52 years, Occ: Agriculture & Household
R/o. Belagali, Tq. Mudhol
- 11) Yallavva W/o Sadappa Uppar
Age: 48 years, Occ: Agriculture & Household
R/o. Mirji, Tq. Mudhol
- 12] Gouravva N/o Ramappa Uppar Dayappagol
Age: 80 years, Occ: Nil
R/o. Jagadal, Tq. Jamakhandi

(Deft. No.1 & 2 : By Sri. I.C.B. Adv.)
(Deft. No. 4, 5, 9 to 11 : Exparte)

Date of Institution of suit	17-01-2018		
Nature of suit (suit on pronote, suit for declaration and possession suit for injunction etc.,	Suit for Partition and separate possession		
Date of commencement of recording evidence.	23-10-2018		
Date of Judgement	29-01-2020		
Total Duration	Year/s	Month/s	Day/s
	02	00	12

Sd/-29-01-2020

(Reshma. K. Goni)
Sr. Civil Judge & J.M.F.C.,
Banahatti.

JUDGEMENT

The plaintiff has filed this suit against defendants for the relief of partition and separate possession of his $\frac{1}{2}$ share in respect of suit schedule properties and also prayed alleged illegal entry in concerned to the suit property is null and void and not binding upon the share of plaintiff.

2. The brief facts of the plaintiff case are as under :

It is the case of the plaintiff that the suit properties are the agricultural lands situated within the limits of Jagadal village. The original propositus by name Ramappa died leaving behind him, his class-I legal heirs i.e. plaintiff and Defendants No.1, 2, & 9 to 12 who are the wife, sons and daughters respectively and one more his legal heir son by name Shrimant who is husband/ father of the Defendant No.3 to 8 respectively. The landed property area measuring 10Ac.21Gs out of R.S.No.168/1 is the ancestral and joint family property of the Plaintiff and Defendants. Accordingly they were use, and enjoyment and cultivation of the said property. Subsequently, the oral partition has been effected, as per the oral partition the Plaintiff and Defendant No.1 are jointly in use, enjoyment and cultivation the suit properties. There was/is no legal equitable partition has been effected between the Plaintiff and Defendant No.1 till today. Therefore, the Plaintiff and Defendant No.1 have got their half shares each in the suit properties. It is submitted that, originally R.S No.168 was standing in the name of original propositus by name Ramappa and his brother Yamanappa S/o Balappa Uppar area measuring 21Ac-03Gs, pk 0.1OGs, assessed at Rs.6-86ps, which is situated within the revenue limits of Jagadal village in Jamakhandi taluka. Accordingly they are in jointly use and enjoyment and cultivation the said landed property. Subsequently, partition was effected between the said brothers on 20/03/1986. As per the partition the original propositus Ramappa Balappa Uppar has got 10Ac.-21 Gs. Accordingly his brother Yamanappa Balappa Uppar has got 10Ac-22Gs out of Pk 0.05Gs, assessed at Rs.3.42ps, in this respect mutation was effected under ME No.3357 of Jagadal village. From the date of the partition said propositus was owner of the said

his share landed property, has use and enjoyment and cultivation the same. Further it is submitted that, after the said partition the original propositus and their family members are jointly use and enjoyment and cultivation the landed property to the extent of 10Ac.21Gs without anybody obstruction disturbance. Subsequently, the oral partition was been effected between the Plaintiff and his 4 brothers by name Defendant No.1 & 2 and deceased Shrimant and also Defendant No.9, this oral partition is voluntarily agreed between themselves. As per the oral partition the Plaintiff has got his share i.e., 0.32Gs and 0.36Gs out of R.S.No.168/1, accordingly Defendant No.1 has got 0.32Gs and 0.37Gs, Defendant No.2 has got 1Ac-39Gs and 1Ac-22Gs. Defendant No.9 has got 2Ac-04Gs and 0-37Gs, and one more real brother of the Plaintiff by name Shrimant has got 1Ac-27Gs. This oral partition is allotted to them on the basis of the fertility of the landed property. Accordingly the Plaintiff and respective Defendants are use and enjoyment of their respective strips of landed properties till today. As per the said oral partition the Plaintiff and his brothers are in use and enjoyment and cultivation of their strips of landed property. Such being a fact the Plaintiff and Defendant No.1 are remained in reunion in respect of the cultivation of their respective shares landed property which are allotted to the oral partition till today. Thus, the Plaintiff and Defendant No.1 are jointly use and enjoyment and cultivation the suit properties. Till today there was no legal partition effected in between the Plaintiff and Defendant No.1 in respect of the suit properties. Further it is submitted that, the Defendant No.1, 2 & 9 along with revenue authorities are colluding with each other and created the bogus, fabricated wardi styled as Watni Patra and certified

the alleged M.E No.4084 of Jagadal village in respect of R.S No.168/1 to the extent of area measuring 10Ac-22Gs, the same is behind the back and without the knowledge of the Plaintiff and his family members. But actually the Plaintiff was not put his signature to the said alleged Watni, even though the revenue authorities were not issued any notice to the Plaintiff prior to certifying the alleged ME No.4084 of Jagadal village. The Defendant No.1 with malafide intention in order to gulp, grab the valuable share landed property of the Plaintiff which is allotted to him in their oral partition. So, on the strength of the alleged mutation the Defendant No.1 was/is not established any manner of right, title, interest and possession over the suit properties. But actually the Plaintiff and Defendant No.1 till today are jointly use and enjoyment and cultivation the properties. Therefore, the alleged mutation entry No.4084 of Jagadal village is not tenable under the provisions of law. Further it is submitted that, subsequently, revenue authorities effected a phodi in respect of the suit R.S.No.168, as per the phodi the number of hissas are formed. So, the present suit RS number and its hissass are fallen to the share of Plaintiff and Defendant No.1. Subsequently, the Defendant No.1 has taking a undue advantage of his name appeared in the record of rights of the suit properties, has going to transfer and alienate the Suit properties in favour of the strangers as well as the defendant No.1 trying to oust the plaintiff from the joint possession of the suit properties without having any manner of right or any reasonable cause. In this regard the Plaintiff has requested the Defendant No.1 alongwith elder persons of the village not to do the same, but the Defendant No.1 has not request heed made by the Plaintiff and not

gave any respect to the words of the elder persons. The Defendant No.1 has continued his illegal acts as stated above. So, the Plaintiff came to know that, it is not possible to continue the joint possession alongwith Defendant No.1. Hence, on 10.12.2017 the Plaintiff approached the Defendant No.1 for effecting the partition and separate possession in respect of the suit properties to the extent of his legitimate half share, but the Defendant No.1 has flatly refused to effect the partition and separate possession. Hence the plaintiffs filed this suit and prayed to decree the suit.

3. After service of summons the defendant No.1 & 12 and defendant No.2 appeared through their counsel and filed their separate written statement. The defendant No. 4, 5, 9 to 11 not appeared before this court and they placed exparate.
4. The defendant No.1 & 12 filed their separate written statement by denying the entire plaint averments. It is admitted that the suit of the plaintiffs not tenable either in law or on facts. The contents of plaint para 2 pedigree and contents of plaint para No.3 to 5 are denied and not admitted by these defendants. It is submitted that on the date of suit, there is no any joint family status in between the parties who have long back dissolved & disrupted coparcenary is within the knowledge of the plaintiff and at the instigation of busybody and of the siblings filed this chance suit to harass these defendants. The plaintiff never allotted as claimed by him on the basis of oral partition measuring 0.32 guntas or 0.37 guntas or defendant No:1/Bhimappa never allotted land measuring 0.32 guntas or 0.37 guntas or defendant No:2/Balappa never allotted land measuring 1Acre 39

guntas or Kadappa/defendant No:9 never allotted land measuring 2 acres 04 guntas and deceased Shrimant never allotted land measuring 1 Acre 27 guntas out of R.S.No:168/1. It is submitted that the plaintiff married Smt. Rukmawwa the lady from Kamaladinni village wherein the sister Smt. Neelawwa daughter of deceased Ramappa was residing and the sister's daughter/Smt. Rukmawwa is married by the plaintiff. The suit lands then were barren lands and no water facility was available and only Saji crop was growing and no any water facility for the suit lands were available. Knowing all these hurdles, the Smt.Neelawwa/mother-in-law of plaintiff decided to take him to Kamaladinni village wherein the plaintiff has given birth to one male and 3 daughters (Renuka, Indrawwa, Dhareppa and Bhagawwa) who have been brought up & gave education in Kamalidinni village. The ration card, Aadhar card as well as Voter ID of all these persons is in Gokak taluka of Kamaladinni village as they have left the Jagadal since from the year 1993-1994 themselves. It is submitted that during the life time of propositus Ramappa-husband of present defendant No:12 to avoid the future litigation in the family or in between plaintiff and his brothers decided to disrupt the family in the presence of elders of the Jagadal village. The propositus Ramappppa or the present defendant No:12 did not wish to take any share and voluntarily for the welfare of the sons left for them only. In spite of it, the plaintiff again filed this false suit and dragged the age-old defendant No:12 before the Hon'ble Court. And in view of it, memorandum of partition was effected in the year 1993 between 4 brothers and same has been duly mutated as per M.E.No:4084 in records. In this mutual partition, the plaintiff did not get the land but

has taken only cash of Rs.80,000/- from the defendant No:1 on 25/5/1993 and 1/6/1993 by executing pro-notes at Banahatti prior to certification of M.E.No:4084 on 26/6/1993 in lieu of his share and left his share to the present defendant No:1 can be perused from the M.E.No:4084. The cash taken in lieu of the share by this plaintiff has been duly utilised by plaintiff and now has taken somersault in this regard and filed this false suit just to harass the defendant No:1 who has taken much trouble to make the land with water facility by making considerable expenditures since all these years i.e., since 25 years even by availing loan from financial institutions. The original pro-notes with Xerox copies are produced herewith. If the plaintiff disputes his signatures appearing in two pro-notes, these defendants have no objections to send them for scientific investigation of LTM appearing in those two pro-notes with that of present LTM of plaintiff available in before the Hon'ble Court, if the plaintiff files any application for the same . Till this day, the plaintiff did not return the said amount nor have taken away those pro-notes from the custody of the defendant No:1. Hence, the plaintiff has utilized the said amount and purchased land in Kamaladinni village. This particular fact is suppressed by the plaintiff and intended to gain wrongfully and filed this false suit.

5. It is submitted that after the mutual partition in the year 1993, the plaintiff has purchased land in Kamaladinni village in the name of his mother-in-law, and after her death, the said land is now standing in the name of wife of plaintiff, during the year 1993-94 and the original sale deed is with plaintiff. It is submitted that prior to the death of husband of defendant No:12 herein the propositus - in the year 1994

as stated supra there is mutual partition as per M.E.No:4084 in between 4 sons of defendant No:12. Mutual partition was effected between the 4 brothers on 28/4/1993 and the said M.E.No:4084 was duly certified on 26/6/1993 and records have been effected as per this ME and respective parties have been enjoying their stripes as owners separately since 25 years. In the said partition, the defendant No:2/Balappa was allotted 0.39 guntas southern side and 1 Acre 22 guntas at northern side. Deceased Srimant (Defendants No:3 to 8's father -husband) allotted middle stripe measuring 1 Acre 27 guntas. The defendant No:9/Kadappa was allotted southern side 2 Acres 04 guntas and 0.37 guntas in northern side. The defendant No:1/Bhimappa has been allotted 0.32 guntas, 0.37 guntas, 0.32 guntas and 0.36 guntas which is including the share of present plaintiff. All these respective shares have been divided in R.S.No:168/1 of Jagadal. The above stated M.E.No:4084 was duly acted upon and separate shares have been duly entered in the records. Thereafter, the defendant No:2/Balappa in view of his share as per M.E.No:4084 alienated 0.2 guntas to Dr. Basprabannavar of Halingali village and 0.2 guntas to Shankar Karigoudra of Jagadal village. For the convenience, again the defendant No:1 and 2 have been partitioned the portion of land and this defendant No:1 has been allotted from defendant No:2 land measuring 29 guntas & 0.28 guntas vide M.E.No:6180. Certified copies of memorandum of partition and other papers have been produced herein. Likewise, deceased Srimant (defendants No:3 to 8 branch of deceased Srimant) sold his portion to Namdev Upkar 19 guntas, 37 guntas to Kallappa Kontikar and 10 guntas to Vittal Walikar for their family necessities and other needs,

the land allotted in mutual partition as per M.E.No:4084 to Srimant. At the same breath, the defendant No:9/Kadappa sold portion of his share allotted to him in mutual partition as per M.E.No:4084 to Shivaning Hallur @ Kanatti, Shankar Gobbani. This Gobbani family again re-sold the land to again Shivling Halluy @ Kanatti. And as per convenience, the defendant No:9/Kadappa and defendant No:1/Bhimappa mutually partitioned 10 guntas vide M.E. No:4096 and 10 guntas is now with defendant No:1, same has been duly mutated in records. In view of all these materials, it is submitted that ME. No. 4084 is acted upon and there is no collusiveness as alleged by the plaintiff in this suit. After lapse of more than 25 longest years, the said M.E.No:4084 cannot be dissected or declared as null and void as claimed in the prayer. On this count the suit of the plaintiff is not maintainable. It is submitted that all those parties are necessary parties to this suit and without them, suit cannot be proceeded and the plaintiff without including all the properties cannot claim reliefs against this sole defendant No:1 & the plaintiff is not entitled to enforce partial partition against other coparceners. On this count, for not bringing all the parties and properties in one hotch-pot, the suit is not maintainable. It is respectfully submitted that since from more than 25 years, the plaintiff or his family members are permanently residing at Kamaladinni village in Gokak taluka. It is submitted that the plaintiff himself excluded from the joint family and left to the Kamaladinni village after 1993-94 from Jagadal village and residing permanently even during the life time of propositus/Ramappa-father. The plaintiff is not ready to even look after defendant No:12 who is age-old mother, The mutual partition as per M.E.No:4084 is within

the knowledge of plaintiff and in view of that partition further alienations are also within his knowledge. From 1993 to 2018, the M.E.No:4084 has not been challenged/questioned by the plaintiff in any forum which still remained unchallenged. On the other hand, the plaintiff is not entitled to seek partial partition after lapse of more than 25 years from the certification of M.E.No:4084 & the plaintiff ought to have filed suit for a complete partition against all the coparceners. Hence, submitted that suit of the plaintiff is hopelessly barred by law and it is not maintainable. Hence prays for dismissal of the suit with compensatory cost of Rs. 50,000/-.

6. The defendant No.2 filed his separate written statement by reiterating the contents of written statement of the defendant No.1 and submit that plaintiff has knowing dairy NO. 4084 partition entered in the year 1993. The defendants after lapse of 25 years when he was not in joint possession of the suit schedule property and he was residing Kamaladinni village and also his wife, childrens Aadar card, Ration card, voter card and his children also residing and given education at Kamaladinni village. Since from 25 years plaintiff was not residing in Jagadal village and he was not permanent resident of Jagadal village. All facts knowingly without disclose the matter the plaintiff has filed this false suit. Hence prayed to dismissal of the suit.
7. On the basis of above pleadings, I have framed following issues as under:

I S S U E S

1. Whether the plaintiff proves that land bearing R.S.No. 168/1 measuring 10A-21G land is ancestral and joint family property of plaintiffs and defendants ?
2. Whether the plaintiff proves mutation entry No. 4084 illegal entry and not binding upon his share in respect of suit schedule property ?
3. Whether defendant No.1 & 2 proves as alleged in para 14 of their written statement ?
4. Whether the defendant No.2 proves that as per dairy entry No. 4084 share allotted to him out of which 2 Gs and sold to Basaprabannavar and 00-02 land sold to Shankar Karigouda ?
5. Whether the defendant No.2 proves that, in the year 2002 dairy NO. 6180 as per partition land 0-28 Gs and 0-29 Gs share allotted to defendant No.1 ?
6. Whether the defendant NO.1 & 12 & 2 proves that oral partition entered in the year 1993 in respect of suit schedule properties ?
7. Whether the plaintiffs is entitled $\frac{1}{2}$ share in respect of suit schedule properties ?
8. What order or decree ?

Addl. Issue

1. Whether the plaintiff prove that there was oral partition in the year 1993 between the plaintiff and defendant No.1 in respect of suit properties ?
8. In order to prove the case plaintiff examined himself as PW-1 and got marked 5 documents as Ex.P.1 to P5 and closed his side. On the other hand in order to prove their defence defendant No.1 examined himself

as DW-1 and got marked 25 document as Ex.D-1 to D-25 and closed his side.

9. I have heard the arguments of both sides and perused the entire materials placed on record. Having regard to the same, I answer the above issues are as under.

10. My findings to the above issues are as follows :

- Issue No.1 : In the Affirmative
- Issue No.2 : In the Affirmative
- Issue No.3 : In the Partly Affirmative
- Issue No.4 : In the Negative
- Issue No.5 : In the Negative
- Issue No.6 : In the Partly Affirmative
- Issue No.7 : In the Affirmative.
- Addl. Issue No.1 : In the Partly Affirmative
- Issue No.8 :As per final order for the following reasons:

REASONS

11. **Issue No-1**: The plaintiff has filed the suit against defendants for the relief of partition and separate possession in respect of suit schedule properties.

12. As per Issue No.1 is concerned the burden cost on the plaintiff to prove that land bearing R.S.No. 168/1 measuring 10A-21G land is ancestral and joint family property of plaintiffs and defendants.

13. In order to prove the case plaintiff examined himself as PW-1 in his examination chief he reiterate the plaint averments. In support of his oral evidence he got marked 5 documents as per Ex.P-1 to P-5. On perusal of the same Ex.P-1 is the RTC extract in respect of land bearing R.S.No. 168/2B totally measuring 1 acre 9 guntas stands in

the name of defendant No.1 who is Bhimappa Ramappa Uppar khata mutated MR-T-129/2012-13 under partition dated : 21-01-2013. Ex.P-2 is the RTC extract in respect of land bearing R.S.No. 168/2G totally measuring 2 acres 37 guntas stands in the name of defendant No.1 who is Bhimappa Ramappa Uppar khata mutated MR-T-129/2012-13 under partition dated : 21-01-2013. Ex.P-3 is the ME No. 4084 which reveals that on 28.04.1993 the land bearing R.S.No. 168/1 owner was Ramappa Uppar he is having 5 sons i.e. Balappa, Bhimappa, Basappa, Srimanth, Kadappa sons of Ramappa Uppar are there out of that Sl.No.3 (i.e. Basappa) Gokak taluka Kamaladinni village share came his joint to Sl.No.2 i.e. Bhimappa Ramappa Uppar as per talks held the land bearing R.S.NO. 168/1 measuring 39 guntas allotted to Balappa Ramappa Uppar and land bearing R.S.No.168/1 measuring 32 guntas 37 guntas and 38 guntas and 36 guntas allotted to Bhimappa Uppar. The land bearing R.S.No. 168/1 measuring 1 acre 27 guntas allotted to Srimanth and land bearing R.S.No. 168/1 measuring 2 acres 4 guntas and 37 guntas allotted to Kadappa Ramappa Uppar. Ex.P-4 is the dairy No. 3357 which reveals that on 20.03.86 land bearing R.S.No. 168 owner i.e. Ramappa, Yamanappa sons of Balappa Uppar are brothers in between them Apasat Watni entered in the said partition land bearing R.S.NO. 168/2 measuring 10 acres 2 guntas allotted to Ramappa Uppar and land bearing R.S.NO.168/1 measuring 10 acres 22 guntas land allotted to Yamanappa as per partition entered dairy mutated. Ex.P-5 is the RTC extract in respect of land bearing R.S.No. 168 measuring 21 acres 33 guntas out of which 21 acres 3 guntas stands in the name of Ramappa Uppar as a karta manager of joint family in the year

1964-65 which reveals that the land bearing R.S.No. 168 is the ancestral joint family property of the plaintiff and defendants.

14. On perusal of cross examination of PW-1 he stated that in the present suit defendant No.1 filed objection submit that he has not ready to give land. His wife name is Rukmavva. His wife parental house is Kamaladinni village. His grandmother name is Neelawwa. But it is denied that in his wife name in Kamaladinni village Sy.No. 82/4 measuring 1 acre land was there. In Kamaladinni village people called them Dayappagl @ Uppar. Kamaladinni village in the lands they have residing obstruct sheet. In his mother-in-law how many acres land was there he don't know. But it is denied that 1 acre land stands in his mother-in-law at Kamaladinni village and also denied that the said property purchased by him in her name. His mother-in-law died on 09.05.2017. The said land varsa entry entered in his wife name is true. But it is denied that in the said land he was obtained loan but his relatives are obtained the loan. He has originally put LTM the defendant No.1 produced promissory note he seen on 20.05.1993 and 01.06.1993 the defendant No.1 two promissory notes he has executed is true. The said promissory note shown to him submit Rs. 40,000/- from the defendant he has not received, only received Rs.10,000/-. But Rs. 10,000/- promissory note he is not there. It is denied that promissory note amount mentioned he has not repaid (return) to defendant No.1. But he submit within two years he paid promissory note amount. He repay amount to defendant No.1 and he received the amount from the defendant No.1 at that time no elders are there. The promissory note till today not tear up. He stated that promissory note was in custody of defendant No.1. He has asked to return but he has

not return said two promissory notes return for that through advocate he has not given notice. These two promissory notes written after that during the life time of his father the mutual partition entered is true. In the said partition to whom which portion has to go it was written is true. 2nd defendant Balappa is his brother. Sy.No. 168/1 measuring 39 guntas and 1 acre 22 guntas land allotted to defendant No.2 is true. The Srimanth related to defendant No. 3 to 8 he died 6-7 years back to him 1 acre 27 guntas allotted in partition is true. The defendant NO.9 Kadappa is his brother to him 2 acre 37 guntas land allotted is true. The defendant No.1 Bhimappa 32, 37, 32, 36 land came he don't know. But together they have cultivated. Srikant, Kadappa & Balappa to their share allotted their names are entered in the records (utaras) is true and also Bhimappa to his name record came is true. Since 28 years the above persons names are entered in record of right is true. But he deposed that only his name in record of right not entered. At that time his father was alive is true. The defendant No.12 his mother and deceased father the above said partition in his name no share will kept is true. But it is denied that ME No. 4084 partition entered. In the year 1992-93 the said lands are dry lands is true. His land strips South-North was there. In the year 1993 his brother partition after that the said lands are East-West stripes. 2nd defendant Balappa share allotted to him he sold 2 guntas land Dr. Basaprabhanavar and 2 acres land sold to Shankar Karigoundar he don't know. The defendant No.1 & 2 in the year 1993 entered ME No. 6180 they have partition is true. The deceased Srimanth in the year 1993 in partition share has been allotted to him out of which 19 guntas sold to Namadev Uppar is true and 10 guntas

land given to Vittal Walikar is true. Kadappa in partition land allotted to him. He was sold 1 acre 5 guntas land to Shivaling Hallur @ Kanatti is true. ME No. 4096 defendant No.9 Kadappa given to defendant No.1 is true. The said partition share allotted to them. They are cultivation and obtained the loan is true. Till today record of right (utara) to entered his name he has not filed any application before competent authority is true. He has asked his share to defendant No.1 but he has not given for the said reason he filed this suit. He and defendant No.1 in between them joint lands allotted in this regard no elders are there. In respect of suit schedule property he has never paid tax is true. He and his brother in between them partition entered not say to written in the suit. The said suit Balappa, Kadappa & Srikant share allotted to them he has not filed. He and defendant No.1 in the year 1993 after partition the suit lands still joint to show that no documents are there is true. He and defendant No.1 name jointly entered to show that no utaras are there is true. The defendants in respect of suit schedule property which crops they have grown not written in the suit is true. He and defendant No.1 till today jointly not obtained loan is true. But it is denied that in the year 1993 he received Rs. 80,000/- and relinquished his right in favour of defendant NO.1. But it is denied that the said amount received from the defendant No.1 and purchased the 1 acre land at Kamaladinni village in her mother-in-law name. Further he denied that the real truth came to know for that his wife name stands 1 acre land inspite of knowing falsely deposed. Further he admitted that his brother in between them in the year 1993 partition after that he and his brother living separately is true.

15. I have perused the evidence of plaintiff and defendants and documents produced by the plaintiff in respect of land bearing R.S.NO. 168/1. On perusal of Ex.P-4 it reveals on 20.03.86 land bearing R.S.No. 168 owner i.e. Ramappa, Yamanappa sons of Balappa Uppar together are brothers in between them, no understanding they have got mutual partition. In the said partition land bearing R.S.NO. 168/2 measuring 10 acres 21 guntas allotted to Ramappa Uppar and remaining land bearing R.S.NO.168/1 measuring 10 acres 22 gutnas land allotted to Yamanappa. It shows that the suit schedule property as per dairy 3357 Apasat Wanti entered between the father of plaintiff and defendants i.e. Ramappa acquired 10 acres 21 guntas land it shows that the said property is ancestral joint family properties of plaintiff and defendants. Further Ex.P-5 certified copy of RTC extract clearly reveals that land bearing R.S.No.168 stands in the name of Ramappa S/o Balappa Uppar the manager and kartha of the family. Hence I am of the opinion that the plaintiff has proved that land bearing R.S.No. 168/1 measuring 10 A-21Gs land is ancestral and joint family property of plaintiff and defendants. Accordingly I answered Issue No.1 in the Affirmative.

16. **Issue No.2, 3, 6 & Addl. Issue No.1** : These issues are inter connected each other and taken up together for discussion to avoid repetition of facts.

According to the Issue No.2 plaintiff contended that mutation entry No. 4084 illegal entry and not binding upon his share in respect of suit schedule property.

17. The defendant No.1 & 2 in their written statement para NO. 14 they have contended that prior to the death of husband of defendant No:12 the propositus there is mutual partition as per M.E.No:4084 in between 4 sons of defendant No:12. Mutual partition was effected between the 4 brothers on 28/4/1993 and the said M.E.No:4084 was duly certified on 26/6/1993 and records have been effected as per this ME and respective parties have been enjoying their stripes as owners separately since 25 years. In the said partition, the defendant No:2/Balappa was allotted 0.39 guntas southern side and 1 Acre 22 guntas at northern side. Deceased Srimant (Defendants No:3 to 8's father -husband) allotted middle stripe measuring 1 Acre 27 guntas. The defendant No:9/Kadappa was allotted southern side 2 Acres 04 guntas and 0.37 guntas in northern side. The defendant No:1/Bhimappa has been allotted 0.32 guntas, 0.37 guntas, 0.32 guntas and 0.36 guntas which is including the share of present plaintiff. All these respective shares have been divided in R.S.No:168/1 of Jagadal. The father of plaintiff and defendants i.e. propositus Ramappa, has been carried out for the peaceful life in the family. The above stated M.E.No:4084 was duly acted upon and separate shares have been duly entered in the records. Thereafter, the defendant No:2/Balappa in view of his share as per M.E.No:4084 alienated 0.2 guntas to Dr. Basprabannavar of Halingali village and 0.2 guntas to Shankar Karigoudra of Jagadal village. For the convenience, again the defendant No:1 and 2 have been partitioned the portion of land and this defendant No:1 has been allotted from defendant No:2 land measuring 29 guntas & 0.28 guntas vide M.E.No:6180. Certified copies of memorandum of partition and other

papers have been produced. Likewise, deceased Srimant (defendants No:3 to 8 branch of deceased Srimant) sold his portion to Namdev Uppar 19 guntas, 37 guntas to Kallappa Kontikar and 10 guntas to Vittal Walikar for their family necessities and other needs, the land allotted in mutual partition as per M.E.No:4084 to Srimant. At the same breath, the defendant No:9/Kadappa sold portion of his share allotted to him in mutual partition as per M.E.No:4084 to Shivaning Hallur @ Kanatti, Shankar Gobbani. This Gobbani family again re-sold the land to again Shivning Halluy @ Kanatti. And as per convenience, the defendant No:9/Kadappa and defendant No:1/Bhimappa mutually partitioned 10 guntas vide M.E. No:4096 and 10 guntas is now with defendant No:1, same has been duly mutated in records. Hence, the intention of these parties/defendants can only be inferred from their acts stated supra. In view of all these materials, it is submitted that ME. No. 4084 is acted upon and there is no collusiveness as alleged by the plaintiff in this suit. After lapse of more than 25 longest years, the said M.E.No:4084 cannot be dissected or declared as null and void as claimed in the prayer. On this count also, the suit of the plaintiff is not maintainable. Further during the course of argument defendant counsel relied upon the decision reported in :

*AIR 1962 S.C. 287
Bhagwan Dayal
V/s
Reoti Devi*

(ii) Family – Joint Hindu family – Uttar Pradesh Tenancy Act, Sec. 227, 230, 264 & 271 of Agra Tenancy Act, 1926, Sec. 11 of Code of Civil Procedure, 1908, Sec. 40 of Madras Estates Land Act, 1908 & Hindu Law – brothers living separately and earning their livelihood – in Government record names of different members of family entered against different portions of property – conduct of parties

more consistent with partition than joint status – onus of proving reunion on party alleging it – there must be agreement between parties with intention to reunite – no evidence of alleged agreement in plaint – sufficient documentary evidence to suggest that deceased never constituted joint family with his nephew.

Further argued that said decision is applicable to the present facts of this case.

18. In order to prove the defence the defendant No.1 examined himself as DW-1 in his examination chief he reiterated the written statement averments. In support of his oral evidence he got marked 25 documents as per Ex.D-1 to D-25. On perusal of the same Ex.D-1 is the dairy No. 4084 in respect of land bearing R.S.No. 168/1 which is partition by the plaintiff and defendants during the life time of their father Ramappa Balappa Uppar. Ex.D-2 is the RTC extract in respect of land bearing R.S.No. 168/1 which stands in the name of Bhimappa in the year 1990-97 to 2001-02. Ex.D-3 is the promissory note dated : 20.05.1993 which reveals that plaintiff has received for Rs. 40,000/- for his family and legal necessity from the Bhimappa. Ex.D-4 is the promissory note dated : 01.06.1993 which reveals that plaintiff has received for Rs. 40,000/- for his family and legal necessity from the Bhimappa. ExD-5 is the check list in respect of land bearing R.S.No. 168 hissa No. 1/2B in the year 2002-03. Ex.D-6 is the application submitted by the defendant No.1 to Tahasildar Jamkhandi regarding Apasat Watni partition entered between Balappa and Bhimappa. The said document reveals that Balappa in respect of land bearing R.S.NO. 168/1B3 measuring 8 guntas northern portion , R.S.NO. 168/1/2B measuring 11 guntas northern portion allotted to defendant No.2 and land bearing R.S.No.168/1P3 out of which measuring 29 guntas

northern portion and R.S.No.168/1/2P out of which 28 guntas northern portion allotted to defendant NO.1. As per partition entered in respect of RTC extract enter their name they have filed application which is received by the Tahasildar Officer on 10.10.2002. Ex.D-7 is the certified copy of Apasat Watni deed which reveals that as per Ex.D-6 the defendant No.1 & 2 got partitioned the land bearing R.S.No. 168/1/P3 and R.S.No. 168/1/2P. Ex.D8 is the RTC extract in respect of land bearing R.S.No. 168/1/2P measuring 39 guntas which stands in the name of defendant No.2 i.e. Balappa khata mutated dairy NO. 4084 (partition right). Ex.D-9 is the RTC extract in respect of land bearing R.S.No. 168/1/P3 measuring 37 guntas which stands in the name of defendant No.1 i.e. Bhimappa Uppar khata mutated dairy No. 4084 (Partition right). Ex.D-10 is the notice issued by the village accountant Jamkhandi dated : 21.11.2002 to defendant No.1 & 2. Ex.D-11 is the RTC extract in respect of land bearing R.S.No. 168/1P1 measuring 1 acre 2 guntas which stands in the name of defendant No.1 khata mutated dairy No. 4084 (partition right). Ex.D-12 & 13 are the RTC extract in respect of land bearing R.S.No. 168/1/2P totally measuring 39 guntas out of which 11 guntas stands in the name of defendant No.2 i.e. Balappa and 20 guntas stands in the name of Bhimappa i.e. defendant No.1 khata mutated dairy No. 6180 partition dated : 26.12.2002. Ex.D.14 is the RTC extract in respect of land bearing R.S.No. 168/1P3 measuring 37 guntas out of which 8 guntas stands in the name of defendant No.2 and remaining 29 guntas stands in the name of defendant No.1 khata mutated dairy No. 6180 partition dated : 26.12.2002.

19. Ex.D-15 is the RTC extract in respect of land bearing R.S.No. 168/1P4 measuring 32 guntas which stands in the name of defendant No.1 Bhimappa khata mutated dairy No. 4084. Ex.D-16 is the RTC extract in respect of land bearing R.S.No. 168/1P4 measuring 32 guntas which stands in the name of defendant No.1 Bhimappa khata mutated dairy No. 4084. Ex.D-17 is the RTC extract in respect of land bearing R.S.No. 168/2 totally measuring 18 acres 26 guntas out of which 36 guntas stands in the name of defendant No.1 khata mutated under MR-140/2011-12 partition dated : 27.12.2011. Ex.D-18 is the MR.No. 180 which reveals that Balappa 39 guntas land as per partition dated : 21.11.2002 the land bearing R.S.No. 168/1/2p measuring 11 guntas land stands in the name of Balappa and 28 guntas stands in the name of Bhimappa. As per varadi given khata mutated their names are entered. ExD-19 is the MR No. 140/2011-12 as per new survey possessor and their extent shown in respect of land bearing R.S.No. 168/2. Ex.D-20 is the MR. No. 314/2009-10 dated : 25.06.2010. Ex.D-21 is the MR.H.68/2012-13 to show that possessor and their extent in respect of land bearing R.S.No. 168/2G measuring 32 guntas and 2 acres 37 guntas stands in the name of defendant No.1. Ex.D-22 is the MR No. 162/2009-10 dated : 02.12.2009 as per Bank report in respect of land bearing R.S.No. 168/1/2p and 168/1/P1 and 168/1P4 stands in the name of defendant No.1 which he has obtained the loan from the various bank. Ex.D-23 is the MR No. 6426/2003-04 it is also shown charge has been created by the bank which defendant No.1 and Vittal Walikar obtained the loan from the PKPS bank. Ex.D-24 is the MR No. 148/2006-07 in PKPS bank loan was obtained the charge has been created. Ex.D-25 is the RTC extract in respect of land

bearing R.S.No. 82/4 measuring 1 acre stands in the name of Rukmavva W/o Basappa Dayappagol khata mutated under MR.T-25/2016-17 dated : 09.05.2017.

20. The said D.W.1 cross examined by the plaintiff counsel he admits that Ramappa Uppar is his father, Yamanappa is brother of his father. Original land bearing R.S.NO. 168 is true. In the said land his father and their brother in between them partition entered is true. In the said partition half share allotted to his father and remaining $\frac{1}{2}$ share is allotted their brother is true. As per partition dairy No. 3357 entered is true. After the partition his father and their share has been allotted they are in possession of the property is true. His father having 4 sons and two daughters. Among the son Srimanth was died and his father also died mother Gourawwa is alive. But he denied that he and his brothers in between them oral partition entered. But he deposed that in Talati office in the presence of elders partition enterd. For Talati office what is written he don't know. But no bond was obtained and also not written. The said partition before Sub-Registrar Office Jamkhandi or Terdal not partition. The said partition deed not produced. But denied that he and his brother according to law no partition entered. Further he clearly admitted that Basappa his share amount received from them and relinquished his right to him to show that document is there. But he denied that the plaintiff his share in land Rs. 80,000/- amount received and relinquished his right falsely stated. In the year 1993 in respect of suit schedule property he was Sajja crop grown, to their family said crops not sufficient is true. In the said land if rain came then only they have grown crop is true. Ex.D-3, D4 promissory note he was taken 15 days and got written

from the advocate. The said promissory note obtained at Banahatti to written said promissory note he and his mother given instruction to his advocate. The said promissory note which date written he was unable to say. The said promissory note mentioned amount half-half two times they have paid to plaintiff. The said Rs. 80,000/- amount how he has given to plaintiff question put by the plaintiff counsel. He stated that the said Rs. 80,000/- amount he was doing coolie work in other house. The said person given amount he has paid to plaintiff. In Banahatti Bhimashi Alagur, Kenchappa Murali and also other persons in their house doing work. The above said person any one of them examined before this court question put by the plaintiff counsel deposed that the said person are died.

21. Further in cross examination of DW-1 clearly admitted that in oral partition to him and plaintiff Basappa 32, 37, 32, 36 guntas lands jointly came is true. As per oral partition property came to plaintiff. The said property plaintiff amount received from him and relinquished his right for the said amount plaintiff in Kamaladinni village his name property purchaser to show that no document has been produced. But he denied that the plaintiff amount received from him and purchased the property in Kamaladinni village falsely deposed. In Ex.D-25 Kamaladinni village land bearing R.S.No. 82/4 property originally plaintiff to his mother-in-law name purchased after her death plaintiff wife under pavati warsa her name was entered.
22. The plaintiff mother-in-law from her husband family 4 acres land was there in Kamaladinni village. But it is denied that Neelawwa name her husband 1 acre land was purchased. But he clearly admitted that in

Kamaladinni village property stands in the name of Neelawwa 1 acre land purchased to the said sale deed he has not put his signature. The said sale deed certified copy from the Sub-Registrar Officer he has not obtained to produced. But he has produced RTC extract. It is denied that to give share to the plaintiff amount has received from him purchased 1 acre land by the plaintiff in Kamaladinni village falsely stated. In the presence of elders as per partition his name land entries was there is true. But plaintiff name any land entries was not there is true. Further he clearly admitted that in RTC extract plaintiff name was not entered for that he was no any income from the land for that he was obtained pension benefit from the government is true and also admitted that the plaintiff share in lands he has obtained to show that the document taken signature not produced. Further he clearly admitted that after dairy entered promissory note was written.

23. Further the said DW-1 cross examined by the plaintiff counsel he stated that Basappa's share he was received amount from him and relinquished his right to show that documents are there. But in support of this the defendants have not produced any documents to show that the plaintiff has relinquished his right in respect of suit schedule property. Further in cross examination he admitted that in the year 1993 in respect of suit schedule property they have grown Sajja crop and no water facility from the said land if only rain came they have grown crops cultivated is true. Further in his cross examination he clearly admitted that ಪಾಲಿನ ಸಲುವಾಗಿ ವಾದಿಗೆ ಹಣ ನೀಡಿರುತ್ತೇನೆಂದು ನಾನು ಬಾಂಡ್ ಪೇಪರನ್ನು ಬರೆಸಿಕೊಂಡಿಲ್ಲ. It shows that the plaintiff has not relinquished his right in respect of suit schedule property to

defendants. IN this regard on perusal of written statement para-14 it is clearly mentioned that the defendant No:1/Bhimappa has been allotted 32 guntas, 37 guntas, 32 guntas and 36 guntas which is including the share of present plaintiff. All these respective shares have been divided in R.S.No:168/1 of Jagadal. The father of plaintiff and defendants i.e. propositus Ramappa in their presence this has been carried out for the peaceful life in the family. The above stated M.E.No:4084 was duly acted upon and separate shares have been duly entered in the records. Further on perusal of Ex.D-1 dairy No. 4084 which reveals that on 28.04.1993 land bearing R.S.No. 168/1 owner Ramappa Balappa Uppar has 5 sons, i.e. Balappa, Bhimappa, Basappa, Srimant, Kadappa out of them Sl.No.3 i.e. present plaintiff Gokak taluka Kamaladinni village the partition came his share joined Sl.No.2 i.e. Bhimappa. But in the said dairy land bearing R.S.No. 168/1 has been allotted 32 guntas, 37 guntas, 32 guntas and 36 guntas to Bhimappa i.e. defendant NO.1. But in the said dairy no share has been allotted to plaintiff. It is only mentioned that in Kamaladinni village partition share has written. But the defendant in support of this to show that in Kamaladinni village land has been allotted to share of plaintiff no documents produced.

24. In the written statement para No.12 the defendants have taken contention that the mutual partition, the plaintiff did not get the land but has taken only cash of Rs.80,000/- from the defendant No:1 on 25/5/1993 and 1/6/1993 by executing pronotes at Banahatti prior to certification of M.E.No:4084 on 26/6/1993 in lieu of his share and left his share to the present defendant No:1. In this regard the defendant produced the promissory note on perusal of the same reveals that

Ex.D-3 written on 20.05.1993 and another promissory note Ex.D_4 was written on 01.06.1993. These two documents Rs. 40,000/- & 40,000/- amount mentioned that the plaintiff has received the amount for his family necessity. No doubt the plaintiff in cross examined by the defendant counsel he admitted his LTM but the amount mentioned in the promissory note i.e. Rs. 40,000/- in Ex.D-3 and Rs. 40,000/- in Ex.D-4 it is denied by the plaintiff and contended that he was only received Rs. 10,000/- from the defendant later he has repaid the said amount. But on perusal of Ex.D-1 Apasat Watni entered between the plaintiff and defendants dairy No. 4084 mutated dated : 28.04.1993. In said mutation it was not written that inview amount received by the plaintiff from the defendant No.1 he has relinquished his right in favour of defendant No.1. The defendants in his written statement para-14 and DW-1 in his cross examination he clearly admitted that the defendant No.1 /Bhimappa has been allotted 32 guntas, 37 guntas, 32 guntas and 36 guntas which is including the share of the present plaintiff. It shows that the plaintiff is having share in respect of suit schedule property. The defendant No.1 plaintiff has relinquished his right in respect of suit schedule property as per Ex.D-1 in support of this defendant No.1 has not produced any register relinquished deed or also agreement of sale to show that plaintiff has executed his share to defendant No.1 in respect of suit schedule property. IN this regard during the course of argument the plaintiff counsel relied upon the decision reported in :

2019 (1) Kar. L.R 204 (SC)
Smt. Bhimabai Mahadeo Kambekar (D) Th. LR
V/s
Arthur Import and Export Company and Others

Land Laws- Dispute relates to the entries made in the Revenue Records-Mutation of a land in the revenue records does not create or extinguish the title over such land nor it has any presumptive value on the title – It only enables the person in whose favour mutation is ordered to pay the land revenue in question.

2019 SCCR 869

Jagdish Prasad Patel (Dead) Thr, L'Rs. & Ano

V/s

Shivnath & Others

B. Property Law-Title Suit-In a suit for declaration for title and possession, plaintiffs-respondents could succeed only on strength of their own title and not on weakness of case of defendants-appellants-Burden is on plaintiffs-respondents to establish their title to suit properties to show that they are entitled for decree for declaration-Plaintiffs-respondents have neither produced title document nor proved their right by adducing any other evidence-Revenue entries for few Khataunis are not proof of title but are mere statements for revenue purpose They cannot confer any right or title on party relying on them for proving their title -Impugned judgment set aside and suit of plaintiffs-respondents dismissed.

25. In this case on perusal of Ex.D_1 dairy NO. 4084 though it is mutated but title of plaintiff not transfer in favour of defendant No.1. The revenue entries cannot confer any right or title on part relying on them for proving their title. Though the defendants produced Ex.D-3 & D4 i.e. plaintiff has received Rs. 80,000/- from the defendant No.1 and executed promissory note. The defendants only got right to recover to said amount from the plaintiff. But he cannot claim that the plaintiff has relinquished his right in favour of defendant No.1. As per Sec. 17 of Registration Act it is clear that any immovable property more than 100 rupees it is compulsory registerable document. But in this case on perusal of documents produced by the defendants the partition entered between the plaintiff and defendants during the life

time of their father no registered partition deed entered to show that the suit schedule property by metes and bounds partitioned by them. No doubt the plaintiff is admitted the share of other defendants allotted to as per dairy No. 4084. But in the said ME No. 4084 joint share has been allotted to plaintiff and defendant No.1 it is clearly admitted by the defendants in their written statement. As per Sec. 58 of the Evidence Act admitted facts need not be proved. When the plaintiffs has not relinquished his right in respect of suit schedule property in favour of defendant No.1. So the dairy No. 4084 is illegal entry not binding upon his share in respect of suit schedule property. Further on perusal of cross examination of plaintiff counsel DW-1 clearly admitted that in oral partition to him and plaintiff Basappa, 32, 37, 32, 36 guntas jointly allotted is true. In oral partition share has been came to plaintiff the said property plaintiff to him amount received and relinquished his right in the said amount plaintiff in Kamaladinni village to his name property purchased to show that no document has been produced. It shows that in the year 1993 oral partition entered between the plaintiff and defendant No.1 in respect of suit schedule property. Hence the defendant No.1 & 12 & 2 proves that oral and partition entered in the year 1993 in respect of suit schedule properties and the plaintiff also proved that there was oral partition in the year 1993. But joint share has been allotted to plaintiff and defendant No.1 in respect of suit schedule properties, but in between them no partition entered. On the other hand the defendants No.1 & 12 partly proves as alleged in para 14 of their written statement. Accordingly Issue No.2 answered in the Affirmative, and Issue No.3, 6 and Addl. Issue No. 1 in the Partly Affirmative.

26. **Issue No. 4 & 5** : These issues are inter connected each other and taken up together for discussion to avoid repetition of facts.

As per Issue No. 4 & 5 are concerned burden cost on the defendant No.2 proves that as per dairy entry No. 4084 share allotted to him out of which 2 Gs land sold to Basaprabannavar and 00-02 Gs land sold to Shankar Karigouda and in the year 2002 dairy No. 6180 as per partition land 0-28 Gs and 0-29 Gs share allotted to defendant No.1. In this regard though the defendants have produced Ex.D-5 & 6 which the Bhimappa and Balappa have mutual partition on 03.10.2002 as per Ex.D-7 they have given application to Tahasildar Jamkhandi the said fact plaintiff has admitted in cross examined by the defendant counsel. But the defendant No.2 not produced registered sale deed to show that the share has been allotted to him out of which 2 guntas land sold to Basaprabannavar and 02 guntas land sold to Shankar Karigouda in this regard no sale deed has been produced and also defendant No.2 not stepped into the witness box to prove the contention taken in written statement. Further the defendant No.1 & 2 mutually partition but the said partition also not entered between the defendant No.1 & 2 through registered partition deed. However the plaintiff has not claimed in the said 28 Gs & 29Gs share allotted to defendant No.1 by the defendant No.2. But to prove the same defendant No.2 has not produced original partition deed or sale deed. Accordingly I answered Issue No.4 & 5 in the Negative.

27. **Issue No. 7** : The plaintiff has proved that the suit schedule properties are ancestral joint family properties of plaintiff and defendant No.1 and also proved that as per dairy No. 4084 joint share allotted to him

and defendant No.1. The said fact is clearly admitted by the DW-1 during cross examined by plaintiff counsel. Hence I am of the opinion that the plaintiff and defendant No.1 joint share allotted to them as per oral partition entered between the plaintiff and his brothers during life time of deceased propositus Ramappa after that plaintiff and defendant No.1 in respect of suit schedule property no partition has taken place. So the plaintiff has proved that in respect of suit schedule property he is having $\frac{1}{2}$ share. Hence he is entitled for $\frac{1}{2}$ share in respect of suit schedule property. Accordingly, I answered Issue No.7 in the Affirmative.

28. **Issue.8:** In view of the above findings on Issue No. 1 to 7 & Addl. Issue No.1, I proceed to pass the following order :

ORDER

The suit of the plaintiff is hereby decreed as follows:

The plaintiff is entitled for $\frac{1}{2}$ share in respect suit schedule property.

Both the parties are directed to bear their own costs of this suit.

Partition is to be effected as per Sec. 54 of CPC.

Draw preliminary decree accordingly.

(Dictated to the Stenographer typed by her, revised and corrected by me and then pronounced in the open court on this the 29th day of January 2020)

Sd/-29-01-2020

(Reshma. K. Goni)
Sr. Civil Judge & JMFC,
Banahatti.

ANNEXURES

1) List of witnesses examined on behalf of the plaintiff:-

PW-1: Basappa Ramappa Uppar @ Dayappagol

2) List of documents marked on behalf of the plaintiff:-

Ex.P-1, 2 & 5 : RTC extracts
Ex.P-3 & 4 : Mutation Extracts

3) List of witnesses examined on behalf of defendants :

DW-1 : Bhimappa S/o Ramappa Uppar @ Dayappagol

4) List of documents marked on behalf of defendants :-

Ex.D-1 : Mutation Extract
Ex.D-2 : RTC extract
Ex.D-3 & 4 : Promissory notes
ExD-5 : Check list
Ex.D-6 : Application submitted by the defendant No.1
to Tahasildar Jamkhandi
Ex.D-7 : C.C. of Apasat Watni
Ex.D8 & 9 : RTC extracts
Ex.D-10 : Notice issued by the village accountant Jamkhandi
Ex.D-11 to 17 : RTC extracts
Ex.D-18 to 24 : Mutation Registers
Ex.D-25 : RTC extract

Sd/-29-01-2020

**Sr. Civil Judge & JMFC,
Banahatti.**