

**IN THE COURT OF THE V ADDL. CITY CIVIL JUDGE,
AT BANGALORE CITY. (CCH-13)**

DATED: THIS THE 18th DAY OF DECEMBER 2010

**PRESENT: Shri ANIL B. KATTI ,B.Com., LL.B.(Spl),
V ADDL.CITY CIVIL JUDGE
BANGALORE CITY.**

O.S.No.3478/1994

**PLAINTIFF /S: Sri. S.R.Tukaram
Since Dead by LRs
1. Smt. M.Pankajamma
2. T.Govindaraju
3. Smt. Leelavathi
Wife and children of late Tukaram
All residents of No.K.20
13th cross, Lakshminarayanpura
Sreerampuram, Bangalore 21.

4. T.Mahadevan,
S/o Tukaram
Lakshminarayanpura
Sreerampuram, Bangalore 21.**

/vs/

**DEFENDANT/S 1. Smt. Anusuya Bai,
W/o late S.Ramanuja Rao
Since dead by LRs
D2 to D8 already on record.
2. S.Narayana Rao,
Since Dead by Legal representative**

**Smt. Prabhavathi,
W/o late Narayana Rao
No.M.170, Lakshminarayanapura
Market Main road, Sreerampuram
Bangalore 21.**

- 3. Sri. Sathyanarayana Rao,
S/o late Ganaba Rao**
- 4. Sri.K.Krishnoji Rao**
- 5. Smt. Chandra Bai**
- 6. Smt. S.Indira Bai**
- 7. Smt. S.Hemavathi Bai
Children of late Sathyanarayana Rao
Residents of No.2, Subramanya
Koil Street, Veerappa Krishnagiri
Town, Krishnagiri District
Tamil Nadu.**
- 8. Smt. Rukmini Bai,
D/o late S.Ramanuja Rao
W/o Janardhana Rao**
- 9. Yogesh**
- 10. Divakar
Sons of Rukmini Bai
Defendants 9 and 10 minors
Represented by their natural mother
Rukmini Bai.
Residents of No.31, Block No.1,
P&T Colony, Visarayadinagar
Madras 39.**
- 11. Mallikarjunappa**
- 12. Smt. Sharadamma**
- 13. Sri.Ramachandra**
- 14. Sri.Krishnamurthy**
- 15. Ramalal**
- 16. Ponnaswamy**

17. Rudramurthy
18. Subbaiah
No.M-170, Market Main Road
Lakshminarayanapura
Bangalore 21.
19. Doddachanna
20. Smt. Padma
21. Sri. S.Nagaraju
All residents of No. N 85
4th cross, Nagappa Block
Bangalore 21.

Date of Institution of the suit	21.6.1994		
Nature of the suit (suit on pronote, : suit for declaration and possession ,suit for injunction, etc.)	Partition and separate possession & permanent injunction		
Date of Commencement of recording of evidence	7.9.2010		
Date on which judgement was Pronounced	18.12.2010		
Duration	Years	Months	Days
	16	05	27

JUDGMENT

The present suit is filed by the plaintiff against the defendants for the relief of partition and separate possession of 1/3rd share of the plaintiff in the suit

schedule property by metes and bounds, with mesne profits and cost of the suit.

.2. The germane facts leading to the case of the plaintiff can be stated in a nut shell to the effect that the plaintiff and defendant No. 1 to 4 constitute Hindu joint family . The plaintiff is the son of Smt. Kuppamma and S.Ramanuja Rao. The first defendant Smt. Anasuya Bai is the second wife of S.Ramanuja Rao and defendant No. 2 and 3 are their son and daughter The defendant No. 9 to 22 are the tenants under defendant No. 1 and the defendant No. 1 is collecting the rent from tenants. The first defendant is accountable to the rents collected by her and to pay the extent of share of the plaintiff. The first defendant has refused to effect partition of the suit schedule properties . Therefore the plaintiff was constrained to file the suit on hand for the relief claimed in the suit.

.3. The defendants No. 1 to 12 ,14,15 and 16 in response to the suit summons have appeared through their counsel . Defendant No. 13, 18 to 21 are placed exparte and Defendant No.17 represented himself in person. The defendant No. 11 to 14 and 16 to 18 who are the tenants filed their written statement and contended that they are not necessary parties to the suit

and it is only a dispute between the family members of the first defendant.

.4. The defendant No. 1, 3,4,5 and 7 have filed their written statement contending the suit of the plaintiff is false, frivolous and not maintainable in law. They have claimed that the defendants No.1,2 and Lakshmi Bai wife of defendant No. 3 and defendant No. 8 have got the suit schedule properties under the registered Will dated 29.12.1965 executed by S.Ramanuja Rao in their favour and since then they are in possession of the said properties bequeathed to them under the Will. The plaintiff is the son of late S.Ramanuja Rao through his mistress Smt. Kuppammal . Therefore the plaintiff is not entitled for any share in the properties of S.Ramanuja Rao. Therefore on these grounds prayed for dismissal of the suit.

.5. The plaintiff during the pendency of the suit is reported to be dead and his Legal representatives are brought on record and they are represented through their counsel.

.6. On the basis of the above narrated facts and pleadings of the parties, the following issues are framed:

.1. Whether the plaintiff proves that the suit schedule

properties are the joint family properties ?

.2. Whether the plaintiff proves that the plaintiff and the defendants 1,2 and 3 constitute a joint Hindu family ?

.3. Whether the plaintiff is entitled for partition and separate possession of 1/3rd share in the suit schedule properties ?

.4. Whether the plaintiff is entitled for permanent injunction ?

.5. Whether the first defendant proves that the suit schedule properties are her own properties in view of the Will dated 20.12.1965 ?

.6. Whether the first defendant proves that the Will dated 20.12.1965 was executed by Ramanuja Rao of his free will ?

.7. Whether the defendants prove that the Will dated 20.12.1965 is obtained by fraud and undue influence ?

.8. Whether the defendants prove that the suit is not maintainable ?

.9. What order or decree ?

.7. The plaintiff in order to prove his case relied on the evidence of P.W.1 and the documents as per Ex.P. 1 to P.18. The defendants in order to rebut the claim of the plaintiff did not adduce any evidence.

.8. Heard arguments of both the sides.

.9. My findings on the above issues are as under:

.1. Affirmative.

.2. Affirmative.

.3. Affirmative.

.4. Negative.

.5. Negative.

.6. Negative.

.7. Negative.

.8. Negative.

.9. As per final Order.

for the following:

REASONS**ISSUE NO.1 to 3:**

.10. These three issues are taken up together for consideration since they are inter lined with each other and to better appreciate the evidence placed on record by both the parties to the suit. The plaintiff is required to prove that the suit schedule properties are the joint family properties of the plaintiff and defendant No. 1 to 3 and he has got right of 1/3rd share.

.11. It is the specific case of the plaintiff that the plaintiff and defendant No. 1 to 3 constitute joint Hindu family . The plaintiff is the son of Smt. Kuppamma and S.Ramanuja Rao . The first defendant is the second wife and defendant No. 2 and 3 are their son and daughter. Defendant No. 9 to 22 are the tenants under the first defendant and she is collecting the rents. The plaintiff in order to prove his case relies on the evidence of P.W. 1 and the documents as per Ex.P. 1 to P.18, whereas the defendants did not adduce any evidence on their behalf. The said material evidence placed on record by the parties to the suit will have to be now appreciated so as to decide the issues under consideration.

.12. The wife of the plaintiff Leelavathi is examined as P.W.1 during the course of her evidence has reiterated the plaint averments and has deposed to the effect that her husband S.R.Tukaram is the son of Smt. Kuppamma and S.Ramanuja Rao. The first defendant is the second wife of S.Ramanuja Rao and defendant No. 2 and 3 are their son and daughter. In support of such evidence, the documents at Ex.P.1 to P.18 are relied. The documents at Ex.P.2 and P.3 are the Death certificates of S.Ramanuja Rao and S.R.Tukaram. Ex.P.4 is the certified copy of the order sheet in RA 2/2004 issued by the Rent Controller and Ex.P.5 is the certified copy of the Form NO.4, Ex.P. 6 and 7 are the certified copies of the order passed by Rent Controller and Ex.P.8 is the Voters' List . The document at Ex.P.10 is the Assessment Register Extract and Ex.P.12 to 18 are the receipts. These documents and the evidence of P.W.1 has not been challenged by defendant No. 1 to 3. The other defendants are the formal parties who are the tenants under the first defendant. The defendants 1,3,5 and 7 in their written statement para 4 have admitted that the plaintiff S.R.Tukaram is the son of S.Ramanuja Rao. They only contended that Kuppamma is the mistress of

S.Ramanuja Rao. The defendants have not produced any documents to that effect. If for the sake of arguments without admitting the said contention of the defendants, then also the illegitimate son is entitled for right of share in the properties of his father. The evidence of P.W.1 and the above referred documents have not been challenged by the defendants for the reasons best known to them. Therefore for these reasons, I am of the opinion that the plaintiff has proved that the suit schedule properties are the joint family properties and the plaintiff and defendant No. 1 to 3 constitute Joint Hindu family and further the plaintiff is having right of 1/3rd share in the suit schedule properties. Consequently, I answer **issue No. 1 to 3** in the **Affirmative** .

ISSUE NO.5 to 8:

.13. The burden of proving these issues of right claimed by them under the Will dated 20.12.1965 and the suit is not maintainable is on the defendants. The defendants have not chosen to contest the claim of the plaintiff and also not cross examined P.W.1. The defendants have not produced the Will dated 20.12.1965 and led any of their evidence to prove their exclusive right over the suit schedule properties by virtue of the Will

dated 20.12.1965. The defendants except contending in the written statement that suit is not maintainable have not placed any material evidence to show as to how the suit is not maintainable Therefore for these reasons, I am of the opinion that defendants have failed to prove due execution of the Will . Consequently, I answer **issue No. 5 to 8** in the **Negative** .

ISSUE NO.4:

.14. The plaintiff has claimed the relief of permanent injunction to the extent of his 1/3rd share in the joint family properties . The suit itself is for relief of partition and separate possession . Therefore no any injunction can be granted to the extent of 1/3rd share claimed by the plaintiff. Consequently, I answer **issue No. 4** in the **Negative** .

ISSUE NO.9:

.15. In view of the reasons assigned, while dealing with issue Nos 1 to 8 , I proceed to pass the following:

ORDER

The suit of the plaintiff is hereby decreed.

It is ordered and decreed that the plaintiff is entitled for partition and separate possession of 1/3rd

share in the suit schedule properties by metes and bounds.

There shall be separate enquiry for mesne profits .

Draw preliminary decree accordingly.

In view of the facts and circumstances of the case, parties to the suit are directed to bear their own costs.

(Dictated to the Judgment writer directly on the computer, typed by her, corrected and then pronounced by me in open court this the 18th day of December 2010).

**(ANIL B.KATTI)
V ADDL.CITY CIVIL JUDGE.
BANGALORE.**

ANNEXURE:

List of witnesses examined for the plaintiff :

P.W.1 Leelavathi

List of witnesses examined for the defendant :

Nil

List of documents marked for the plaintiff :

Ex.P.1	General Power of Attorney
Ex.P.2	Death certificate of S.Ramanuja Rao
Ex.P.3	Death Certificate of S.R.Tukaram
Ex.P.4	Certified copy of the order sheet in RA 2/2004 issued by Rent Control
Ex.P.5	Certified copy of the form No.4
Ex.P.6-7	Certified copies of the order issued by Rent Control
Ex.P.8	Voters' List

Ex.P.9	Genealogical tree
Ex.P.10-11	Assessment Register Extract
Ex.P.12-18	Receipts.

List of documents marked for the defendant :

NIL

**(ANIL B.KATTI)
V ADDL.CITY CIVIL JUDGE;
BANGALORE**

