

**TITLE SHEET FOR JUDGMENTS IN SUITS
IN THE COURT OF THE PRL CIVIL JUDGE AND JMFC,
AT: BELAGAVI**

Dated this 16th day of April, 2021

PRESENT

Shri Basavaraj H. Talawar,

B.A., L.L.B.

Prl. Civil Judge and JMFC,

Belagavi.

ORIGINAL SUIT No. 321/2015

Plaintiff:-

1. Smt. Anandabai W/o. Sidrai Chougale,

Age: 72 years, Occ: Household,

R/o: Desai Galli, Kakati,

Tal & Dist: Belagavi .

(By Shri. A.C. Kathari, Advocate)

//VS//

Defendants :-

1. Shri. Mallappa S/o. Bhimarao @ Bhimarai Joyi,

Age: 75 years, Occ: Agriculture,

R/o: Maruti Galli, Sambra, Belagavi.

2. Shri. Shivaji S/o. Bhimarao @ Bhimarai Joyi,

Age: 68 years, Occ: Agriculture,

R/o: Maruti Galli, Sambra, Belagavi.

3. Shri. Papanna S/o. Bhimarao @ Bhimarai Joyi,

Age: 60 years, Occ: Agriculture,

R/o: Maruti Galli, Sambra, Belagavi.

4. Shri. Balu S/o. Babu Barde,

Age: 38 years, Occ: Agriculture,

R/o: Maruti Galli, Sambra, Belagavi.

5. **Smt. Shantabai W/o. Balu Joyi,**
Age: 32 years, Occ: Household,
R/o: Maruti Galli, Sambra, Belagavi.

(Deft Nos. 1 to 3: Absent)
(Deft Nos.4 & 5: Exparte)

Date of institution of suit	09/03/2015
Nature of the suit	Partition & Separate Possession
Date of evidence recorded	21/08/2019
Date of judgment pronounced	16/04/2021
Total duration	Years Months Days 06 01 07

Prl. Civil Judge and JMFC,
Belagavi.

J U D G M E N T

The Plaintiff has filed the present suit seeking relief of partition and separate possession in respect of suit properties and the plaintiff has also sought her legitimate 1/5th share in the suit property.

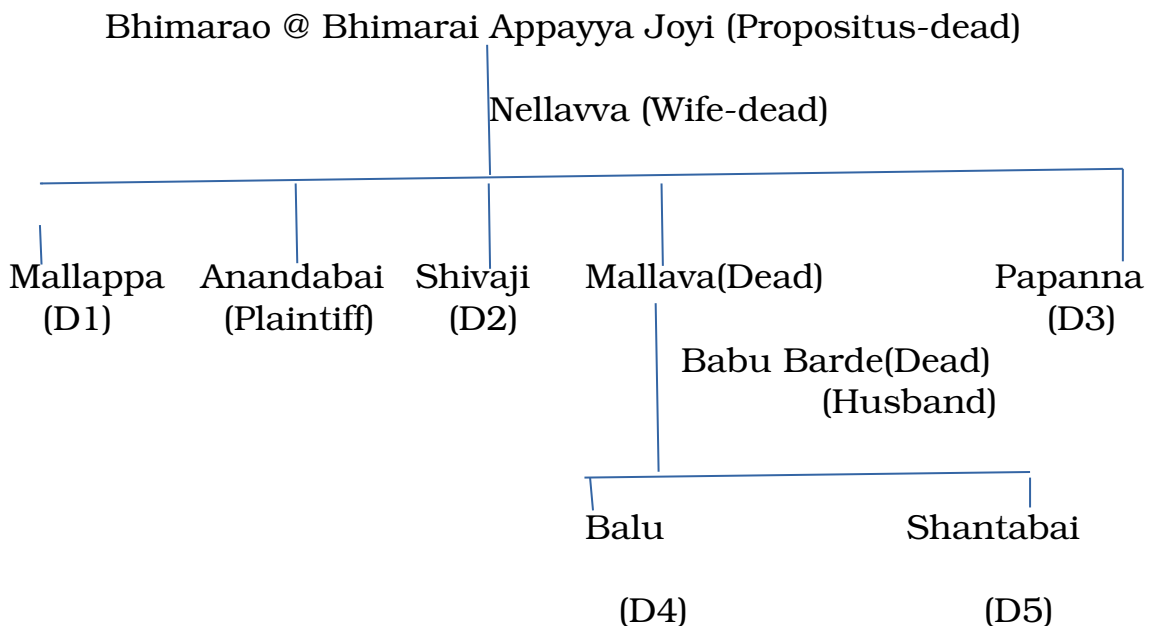
2. **The description of the suit property:**

1) The Agricultural Property bearing Survey No.199 Hssa 1 A measuring 11 guntas and 2 annas situated at Sambra, Tq & Dist: Belagavi.

2) The House properties bearing village Panchayat numbers as under:

- i) RCC House property with VPC No.23 situated at Sambra.
- ii) Red tiled roof House property with VPC No.25 situated at Sambra.
- iii) Red tiled roof house property with VPC No.494 situated at Sambra.

3. **Genealogy of the family is as under:**



4. **The brief facts as stated in the plaint:**

It is the specific contention of the plaintiff that the original propositus of the plaintiff and defendants is late Shri. Bhimarao @ Bhimarai Appayya Joyi. He married to Nellavva. Both of them expired. Out of their wedlock, the plaintiff, defendant No.1, defendant No.2, defendant No.3 and the mother of defendant Nos. 4 and 5 Smt. Mallavva W/o. Babu Barde are born. The agricultural property i.e Survey No. 199 Hissa 1A of Sambra and other agricultural properties were earlier held by the propositus and were being cultivated by him. The House properties VPC Nos. 23,25 and 494 were held by the propositus i.e the father of the plaintiff and defendant Nos. 1 to 3 and grandfather of the defendant Nos. 4 and 5. The plaintiff is the sister of the defendant Nos. 1 to 3 and aunt of defendant Nos. 4 and 5. The suit properties are held and enjoyed as joint family properties by the plaintiff and defendants. Though the plaintiff and defendants are residing separately, they constitute a Joint Hindu Undivided Family and till today there is no partition by metes and bounds in the suit property.

5. Further, it is averred that plaintiff is being an illiterate lady regularly visit the suit properties. But, the defendant Nos. 1 to 3 quarreled with her and directed her not to come to Sambra,

wherein the suit properties were situated. The plaintiff came to know that certain portion of the agricultural property and other properties of her father have been acquired by the Air Port Authority of India and for the same, the defendants were under the impression that she would demand her share in the property and quarreled with her. The plaintiff being the legal heir of late Shri. Bhimarao @ Bhimarai Joyi is entitled to share in the suit properties and also in the compensation amount awarded by the AirPort Authority of India. These being the facts, the plaintiff requested the defendant Nos. 1 to 3 to give her legitimate share in the suit properties as well as in the compensation amount, but the defendants refused for the same. Hence, the plaintiff constrained to file this suit.

6. In pursuance of suit summons, the defendant Nos. 1 to 3 appeared through their counsel and filed the written statement. In spite of service of summons, the defendant Nos. 4 and 5 not appeared before the Court and remained absent, hence they were placed exparte.

7. Brief Averments of the Written Statement Of Defendant

Nos. 1 to 3 are as under :-

The defendants have denied the plaint averments but admitted the genealogy tree given by the plaintiff. Further, it is contended that after the demise of the propositus Bhimarao, the family properties which was held and possessed by him was came to be partitioned orally in the month of April-1997 for which the plaintiff and late Smt. Mallawwa were consented and thereby the names of male members are authorisedly came to be entered as an owners and cultivators with regard to agricultural land and as such, in the Gram Panchayat Extract as an owner and occupier. Further, the defendants are in exclusive possession, enjoyment and wahiwat of the suit properties fallen to their respective share and they are paying tax to the authorities which is well within the knowledge of the plaintiff and other defendants. Further it is contended that on the date of filing of the suit, the suit properties are not the joint family properties nor plaintiff is a joint family member, but suppressing all these facts, the plaintiff has falsely stated that there exists Joint Hindu undivided family. Further it is contended that the suit property consisting of agricultural land and house property valued more than Rs.40,00,000/-, hence the suit of the plaintiff is not maintainable. Further, the house properties which were previously open space were constructed by the

defendants by investing huge amount and thereby exercised their right of ownership after oral partition in the year 1997 which is within the knowledge of the plaintiff and another sister, hence the suit of the plaintiff is not maintainable in the eye of law. Hence, these defendants prays to dismiss the suit.

8. Based upon the above said pleadings on record, the following points arose for consideration of the court:

- 1. Whether the Plaintiff proves that suit schedule property is the undivided joint family property of the plaintiff and defendants?**
- 2. Whether the plaintiff proves that she is entitled for 1/5th share in the suit schedule properties?**
- 3. Whether the defendants prove that this Court has no pecuniary jurisdiction to entertain the present suit?**
- 4. Whether the defendants prove that the suit of the plaintiff is not maintainable?**
- 5. Whether the plaintiff proves she is entitled for the relief sought for?**
- 6. What order or decree?**

9. In order to substantiate her case, the Power of Attorney Holder of the plaintiff got examined as PW.1 and through him Ex.P.1 to Ex.P.3 were marked. The defendant Nos.1 to 3 have filed Written Statement, but not cross examined the PW.1 and not adduced evidence. The defendants Nos.4 and 5 placed exparte

and hence, there is no cross-examination to PW.1 and there is no defendant's evidence.

10. Heard Shri. ACK Advocate for Plaintiff. The counsel for defendant MMA, Advocate filed memo along with the office copy of retirement notice issued to defendant Nos. 1 to 3 and copy of postal receipt and postal track consignment with regard to service of retirement notice on defendant Nos. 1 to 3. In spite of service of notice of retirement notice from their counsel, defendant Nos. 1 to 3 have not appeared before the Court. Hence, Cross-examination of PW.1 is taken as Nil and arguments by defendants is taken as 'Nil'. Perused the materials on record.

11. My answers to the above points are as under:

Issue No.1	:	In the Affirmative
Issue No.2	:	In the Affirmative
Issue No.3	:	In the Negative
Issue No.4	:	In the Negative
Issue No.5	:	In the Affirmative.
Issue No.6	:	As per the final orders

For the following:

:REASONS:

12. ISSUE NO.1:- It is the specific case of the plaintiff that Shri. Bhimarao @ Bhimarai Joyi was the propositus of the family of the plaintiff and the defendants. He married to Nellavva. The propositus died twenty years back and thereafter his wife also died.

The plaintiff is the daughter of the propositus. The defendant Nos. 1 to 3 are the sons and the defendant Nos. 4 and 5 are the children of the deceased daughter Mallavva of the propositus. The suit properties consisting of land and houses were owned and possessed by the propositus during his life time. The plaintiff and the defendants are in the joint possession and enjoyment of the suit properties. Though the plaintiff and the defendants reside separately, they constitute an Undivided Joint Hindu Family. The suit schedule properties are not partitioned by metes and bounds. Shri. Babu S/o. Sidrai Chougule being the General Power of Attorney holder of the plaintiff got examined himself as PW.1 and got exhibited Ex.P1 to Ex.P3. Ex.P1 is the General Power of Attorney, Ex.P2 is the R of R extract and Ex.P3 is the VPC extract. In the affidavit filed in lieu of examination-in-chief, he has reiterated the plaint averments.

13. The defendant Nos. 1 to 3 in their written statement admitted relationship between the plaintiff and the defendants. But, the contention of the defendants that after the death of the propositus of the family, there was a oral partition of the suit schedule properties in the month of April, 1997 with the consent of the plaintiff and late Mallawwa who was the mother of the defendant

Nos. 4 and 5. Accordingly, the names of the male members were mutated to the suit schedule properties in the revenue records and Gram Panchayat records. These defendants are in exclusive possession, enjoyment and vahiwat of portion of the suit schedule properties came to their respective share. On the date of filing of the suit, suit schedule properties are not the joint family properties and the plaintiff is not a member of the joint family. Since the suit schedule properties were orally partitioned in April, 1997, this suit is not maintainable since the suit schedule properties cannot be partitioned again.

14. The defendant Nos. 1 to 3 with regard to oral partition of the suit schedule property, except the averment made in the written statement have not produced any piece of paper to prove the oral partition. The counsel representing them got retired from conducting the suit during its pendency. So, this Court has issued notice to the defendant Nos. 1 to 3 to appear in person or through their Counsel to contest the suit. But, they did not appear before the Court. The defendant Nos. 1 to 3 did not step into the witness box to put forth their case. Thus, the evidence of the plaintiff has remained unchallenged. The defendant Nos. 1 to 3 have failed to prove the oral partition of the suit schedule properties.

15. This Court relies on a decision delivered by the Hon'ble Apex Court in **Vineeta Sharma V/s. Rakesh Sharma on 11.08.2020.**

wherein it is held that:

“ The Explanation to Section 6(5) provides that for the purposes of Section 6, ‘partition’ means effected by any registered partition deed or effected by a decree of a court. The same was added subsequently. In the initial Note, it was mentioned that partition should be properly defined, leaving any arbitrary interpretation, and for all practical purposes, the partition should be evidenced by a registered public document or have been affected by a decree of a court. In a case partition is oral, it should be supported by documentary evidence. Initially, it was proposed to recognize the oral partition also, in case the same is supported by contemporaneous documentary evidence. The intention was to avoid any sham or bogus transactions in order to defeat the rights of coparcener conferred upon daughters by the Amendment Act, 2005.”

16. The evidence of PW.1, remained unchallenged, unrebutted and uncontroverted. Ex.P2 and Ex.P3 are the R of R extracts and VPC extract of the suit schedule properties. The names of the defendant Nos.1 to 3 are appearing in Ex.P2 i.e RTC extracts as joint owners. Hence, relying upon the above said oral and documentary evidence on record and also relying upon the

admitted facts on record, the Court is of the opinion that, the plaintiff has succeeded in proving that, herself and defendants constituted undivided joint Hindu family. Further, the Court opines that, the plaintiff has also succeeded in proving the fact that, the suit properties are joint family properties. In the result, the court proceeds to answer **Issue No.1 in the Affirmative.**

17. **ISSUE NOS. 3 and 4:** In order to avoid the repetition, I would like to take up both the issues together for my discussion as they are inter-linked with each other.

18. The defendants have taken specific contention that this Court has no pecuniary jurisdiction to entertain the present suit therefore the suit of the plaintiff is not maintainable. The defendant Nos. 1 to 3 have contended in their written statement that the valuation of the suit properties is Rs.40,00,000/- which goes beyond the pecuniary jurisdiction of this Court. But, the defendants did not produce any document to substantiate their contention. Therefore, the valuation shown by the plaintiff in the plaint is unchallenged. Admittedly the plaintiff has valued her share at Rs.4,00,000/- which is well within the pecuniary jurisdiction of this Court. Therefore The defendant Nos. 1 to 3 have failed to prove that the suit claim is beyond pecuniary

jurisdiction of this Court. Hence, the suit of the plaintiff is maintainable this Court. Hence the Court proceeds to answer ***Issue Nos. 3 and 4 in the Negative.***

19. **ISSUE NOS. 2 & 5:** In order to avoid the repetition, I would like to take up both these issues together for my discussion as they are inter-linked with each other.

20. The relationship between the plaintiff and the defendants is not disputed. It is held that the suit schedule properties are the joint family properties. Though the defendant Nos. 1 to 3 contended that there is an oral partition of the suit schedule properties in April-1997, they failed to prove the same. The propositus late Shri. Bhimarao @ Bhimarai Joyi had three sons and two daughters. The plaintiff is one of the daughters.

21. Since, the court has held the view that the Plaintiff and defendants are also having legitimate right over the suit properties, the next question arose for consideration is with regard to quantum of share of the parties to the suit. The Plaintiff is admittedly, entitled for 1/5th share, the defendants No.1, 2 and 3 being brothers of the Plaintiff are entitled for 1/5th share each, the defendants No.4 and 5 being the Legal Representatives of deceased

Mallavva W/o Babu Barde are entitled together for 1/5th share in the suit properties. In the result, the court proceeds to answer ***Issue Nos. 2 and 5 in the Affirmative.***

22. **ISSUE No.6:-** In view of the aforesaid findings on Issue Nos.1 to 5, the court proceeds to pass the following:

ORDER

The suit of the plaintiff is hereby decreed with cost.

In the result, it is hereby declared that the Plaintiff is entitled for 1/5th share in the suit properties and she is also entitled for separate possession of her share subject to metes and bounds.

Draw preliminary decree accordingly.

(Dictated to the Judgment Writer directly on computer, typed by her, corrected by me and then order pronounced in the open Court on this 16th day of April- 2021)

(Basavaraj H. Talawar)
Prl.Civil Judge and JMFC,Belagavi.

ANNEXURE

The list of witnesses examined on behalf of the plaintiff/s.

P.W.1 - **Shri. Babu S/o. Sidrai Chougale**

The list of witnesses examined on behalf of the defendant/s

-NIL-

The list of documents exhibited on behalf of the plaintiff/s

Ex.P.1 : General Power of Attorney.
Ex.P.2 : R of R extract.
Ex.P.3 : VPC extract/

The list of documents exhibited on behalf of the defendant/s

-NIL-

(Basavaraj H. Talawar)
Prl.Civil Judge and JMFC,Belagavi.