

KABG040039052013



**IN THE COURT OF III ADDITIONAL CIVIL JUDGE
& J.M.F.C., AT: BELAGAVI**

Present: Sri. Nagaraj Barki. B.A. LL. B,

III Addl. Civil Judge & JMFC, Belagavi.

Dated: This, the 23rd day of June 2023

ORIGINAL SUIT NO.1611/2013

1. Smt. Tayawwa Hanamantapa Naik,
Age: 60 years, Occ: House Hold
R/o: Marihal Tal & Dist: Belagavi.
2. Smt. Nelawwa Shrikanth Patil,
Age: 34 years, Occu: House Hold
R/o: Shindolli, Tq: Bailhongal,
Dist: Belagavi.
3. Smt. Basawwa Basappa Naik
Age: 32 years, Occ: House Hold
R/o: Bairanhatti, Tal: Bailhongal,
Dist: Belagavi.
4. Smt. Malawwa Ravindra Patil
Age: 30 Years, Occ: House Hold
R/o: Mabanur, Tal: Saudatti,
Dist: Belagavi

.... Plaintiffs

(By Shri. R.C. Patil, Advocate)

V/s.

- 1 Shri. Naikappa Bhimarai Naik,
Age: 51 years, Occ: Agriculturist
R/o: Marihal, Tal & Dist: Belagavi.

2. Shri. Basappa Bhimarai Naik,
Age:55 years, Occ: Agriculturist
R/o:Marihal, Tal & Dist: Belagavi.
3. Shri. Gireppa Bhimarai Naik
Age: 64 years, Occ: Agriculturist
R/o: Marihal Tal & Dist: Belagavi.
4. Shri. Shivappa Bhimarai Naik
Age: 61 years, Occ: Agriculturist
R/o: Marihal, Tal & Dist: Belagavi.
5. Shri Babu Bhimarai Naik
Age: 46 years, Occ: Agriculturist
R/o: Marihal, Tal & Dist: Belagavi.
6. Shri. Maruti Rama @ Ramappa Naik
Age: 45 years, Occ: Agriculturist
R/o: Tarihal, Tal & Dist: Belagavi.

.... defendants

(Deft No.1 by A.J. Kulkarni, Adv. Deft No.2 & 3: Exparte, Deft No.4 by S.C. Jain Adv. Deft. No.5 by N.S. Patil Adv, Deft No.6 by R.R patil Adv)

Date of the institution of the suit	14.11.2013						
Nature of the suit (suit on pronote, suit for declaration and possession suit for injunction, etc.)	Partition and separate possession.						
Date of the commencement of recording of the Evidence	14.10.2015						
The date on which Judgment was pronounced	23.06.2023						
Total Duration	<table><tr><td><u>Year/s</u></td><td><u>Month/s</u></td><td><u>Day/s</u></td></tr><tr><td>09</td><td>07</td><td>09</td></tr></table>	<u>Year/s</u>	<u>Month/s</u>	<u>Day/s</u>	09	07	09
<u>Year/s</u>	<u>Month/s</u>	<u>Day/s</u>					
09	07	09					

JUDGMENT

The plaintiffs have filed the present suit against the defendants for the relief of partition and separate possession by awarding 1/7th share in all the suit schedule properties.

Description of suit property as follows:

The suit properties are consisting of Agriculture lands and house properties and open sites situated at Marihal Village Tal and Dist: Belgaum. The suit properties are ancestral properties of the plaintiffs and defendants. That the descriptions etc. of the suit properties are explained in the schedule No. I and II which is enclosed with the plaint.

2. The brief facts of the plaintiffs case are as under,

One Bhimrai Naik was as legal representative to represent the estate of deceased. He was died on 01.04.1991 leaving behind his sons. The plaintiff No.1 is wife of the deceased Hanamant who was brother of defendants and the plaintiffs No.2 to 4 are the daughters

of deceased Hanumant and plaintiff No.1. That the plaintiffs and defendants are in joint possession and enjoyment of the suit properties. The husband of the plaintiff No.1 and father of the plaintiffs No.2 to 4 was innocent and sober man and he was engaged in the agriculture operation. The present defendants in collusion with their father late Bhimarai Naik got submitted false waradi to the Tahasildar Belgaum for mutation of their names to the above said suit properties and in collusion with the Revenue Authority, the defendants No. 1 to 3 got mutated their names in the Record of rights of the suit properties behind back of plaintiffs in order to grab the valuable properties. The plaintiffs were unaware of the above said facts and came to know the same only when they applied for records of rights of suit properties.

3. Till today the family of the plaintiffs and defendants are joint and there is no partition in respect of the suit properties by metes and bounds. All the suit properties are ancestral properties of the plaintiffs and

Defendants and they are in joint possession and enjoyment of the suit properties. These being the real state of affairs, the defendant's No.1 to 3 colluding with the defendant No. 4 and 5 are trying to alienate the suit properties to taking the undue advantage of appearance of the names of the dependents No.1 to 3 in the revenue records of the suit properties, the plaintiffs after learnt the said fact, immediately requested the defendants Nos.1 to 3 to effect the partition in the suit properties and to hand over their lawful share. The defendants at the instigation of defendants No.4 and 5 started procrastinating to effect the partition in the suit properties, finally in second week of October 2013 the plaintiffs with the help of elder persons of the village, requested the defendants effect partition, but the defendants flatly refused to allot the legitimate share of the plaintiffs and in turn threatened the plaintiffs alienate the suit properties.

4. In view of refusal on the part of the defendants to effect partition in the suit properties, the plaintiffs are

constrained to file the this suit for the relief of partition and separate possession. That the plaintiffs and defendants are Hindus governed by the Mithakshra schedule law and as per the Hindu succession Act, the plaintiffs are entitle to their fathers share get i.e. 1/7th share, in all the suit properties. Hence, this suit.

5. In response to the suit summons, the defendant No.1, defendant No.4, defendant No.5 and defendant No.6 have appeared before the court through their respective counsel, the defendant No.2 and 3 are placed exparte.

The defendant No.1 has filed written statement. In the written statement the defendant No.1 has denied the averments made in the plaint and he has contended that, the plaintiffs are excluded from possession of the Agriculture land bearing Sy. No. 195/6, Sy. No. 195/11, 78/1, 170/2, 170/3, 170/6 and also from Sy. No. 247/1 and 95/1+2+3, 247/2, 218 and 218/9 and also House properties bearing V.P.C No. 193/1, 193/2, 193/2A in the year 1996. As such, the valuation made by the plaintiffs

and the Court fee paid Under Section 35(2) of Karnataka Court fee suits valuation Act is not proper and legal and unless the plaintiff pay the proper Court fee and suits valuation Act. The description of the suit property shown in the plaint and in the schedule I and II without giving the boundaries of each of suit properties is deceptive and misleading unless the plaintiffs gives proper and correct description of each of suit properties and their boundaries the suit of the plaintiff cannot be entertained. Bhimrai Naik died on 01.04.1991 leaving behind him sons. It is admitted that plaintiff No.1 is the wife of deceased Hanumant who is the brother of this defendants and the plaintiffs No.2 to 4 are the daughter of deceased Hanumant, All the suit of the said partition, the defendant No.3 came in properties were held and possessed by the father, Shri. Bhimrai Hanumant Naik. Said Bhimrai Hanumant Naik is the father of this defendant, the defendant No.2, 3, 4 and 5 and deceased Hanumant, i.e. the father-in-law of plaintiff No. 1 and grand father of plaintiff No.2 to 4.

6. The eldest son of Bhimarai i.e., eldest brother of this defendant No.1 by name Hanumant died in the year 2006 leaving behind him his wife Tayavva i.e., Plaintiff No. 1 and 3 daughters by name Neelawwa, Basavva and Mallawa i.e., plaintiffs No.2 to 4. The husband of plaintiff No.1 and father of plaintiff No.2 to 4 deceased Hanumant left Marihal Village after 3-4 years, thereafter he came back to Marihal Village and started separately and did not keep any relations with the father.

7. The defendants No. 1, to 4 and 5 were only helping the father in cultivating the suit properties. The Shivappa-defendant No.4 was addicted to voices and was wasting the joint family income and therefore the father thought it necessary to effect partition by metes and bounds. The father Bhimrai Naik thereafter effected partition between defendant No.1 to 5 in respect some of the properties in the year 1996. By way of said partition, the father allotted Sy. No.195/6 195/11, 78/1, 170/2, 170/3, and 170/7 to Giraippa (the defendant No.3). The furtherance actual

physical possession of the properties allotted to him, and accordingly he became the absolute owner of the said properties and accordingly his name came to be recorded in the relevant revenue records as per mutation entry No.2300. In the said partition this defendant was allotted Sy. No.195/1+2+3, Sy No.247/1, 247/2, 218/8 and 218/9 of Marihal Village and accordingly this defendant was put in actual physical possession of the said properties and thus this defendant become absolute owner of the said properties. In furtherance of the said partition the name of this defendant came to be recorded in the relevant revenue records, by mutation entry No.2233. Basappa was allotted to Sy. No.247/4 and 218/9 Shri. Basappa laid plots in Sy. No.247/4 and sold to various persons. Since Sivappa was addicted to voices no separate properties were allotted to him since the husband of plaintiff No.1 also started residing separately and the deceased father suspected that he would alienate the properties or create encumbrance if separate properties are allotted.

Therefore, he was also not allotted any separate property. However, the father was kept the remaining properties jointly in the name of all his 5 sons. Subsequently, they all had an oral family arrangement and as per the oral family arrangement, they are in possession of their respective portion of properties in respect of the properties which were kept in joint by the deceased father. The deceased father also effected partition in house properties and accordingly property bearing V.P.C No.193/1 and 193/2 were allotted in the name of this defendant, House property bearing V.P.C No.193 has been allotted in the name of the husband of the plaintiff No.1 in furtherance to said partition the plaintiffs have got their name recorded in respect of the agriculture land which were kept joint by the deceased father at the time of partition. The partition effected by the father in 1996 and the subsequent oral partition between plaintiffs and defendants in respect of remaining properties, thus it acted upon. The deceased Hanumant has never challenged the said partition and

recording the name of this defendants, Giraippa and Basappa during his life time and has consented for the same. The plaintiffs have suppressed all these facts and at the instigation of some ill-wisher of this, defendants have filed RTS/AP-147/2011-12, RTS/AP-148/11 and RTS/AP-149/11 before the Assistant Commissioner of Belgaum challenging the mutation entry passed in the year 1996. The plaintiffs realizing that they may not succeed in their evil design and in the RTS proceedings filed before Assistant Commissioner, they have got filed this vexatious suit by suppressing true and correct fact of the case as to harass this defendant. The plaintiffs are estopped from contradictory the there is no possession by metes and bounds.

8. If the Court come to conclusion that there is no partition by metes and bounds in respect of Sy No. 78/2 81, 151/2, 151/3, 151/5, 167/2, 167/3, 169/1, 169/2 and Sy. No.317 as the same are shown jointly in the revenue records, under such circumstances this defendant No.1 be

allotted his separate share in all these properties by dismissing the suit of the plaintiffs in respect of other properties. Hence, prayed to dismiss the suit.

9. In view of the above pleadings, the following Issues have been framed:

ISSUES

1. Whether the Plaintiffs prove that the suit schedule properties are ancestral properties?
2. Whether the Plaintiffs prove that they have 1/7th legitimate share in all the suit schedule properties?
3. Whether the plaintiffs are entitled for partition and separate possession as claimed for?
4. What order or decree?

10. In support of plaintiff's case, the plaintiff No.1 herself was examined as PW.1 and she has produced 48 documents and the same got marked at Ex.P1 to Ex.P48. On the other hand, the defendants did not adduced any evidence even this Court had given sufficient opportunity

to lead their evidence. Neither the defendants did examine, nor the defendants did produce the documents in support of defendants case.

11. Heard argument on learned counsel for the plaintiffs. Since, the defendants did not ready to addressed on behalf of them, the argument of defendants has taken as 'not addressed' and considered the pleadings, evidence on record, arguments advanced, the aforementioned issues are answered as follows:

Issue No.1: In the Affirmative

Issue No.2: In the Affirmative

Issue No.3: In the Affirmative

*Issue No.4: As per the final order,
for the following: -*

: REASONS :

12. ISSUES NO.1 TO 3: These issues are taken up together for discussion to avoid repetition as they require the same set of pleadings and documents.

The plaintiffs have filed the present suit against the defendants for the relief of partition and separate possession over the suit schedule properties.

13. In order to prove the case of the plaintiffs, the plaintiff No.1 by name Smt. Tayawwa Hanumant Naik has filed an affidavit in the lieu of her chief examination and examined as PW-1 wherein the plaintiff No.1 has reiterated plaint averments in her chief examination and to support of oral evidence, the plaintiff No.1 has produced 48 documents and same got marked as Ex.P.1 to P.48. On perusal of the said documents which are relied upon by the plaintiffs it could be seen that, Ex.P1 is surviving family member certificate pertaining to deceased Hanumant Bheemarai Naik, wherein the names of the legal heirs mentioned as Tayawwa, Neelawwa, Basawwa and Mallawwa. Ex.P2 to Ex.P16 are computerized record of rights in respect of landed properties bearing Sy.No.78 measuring 3 acre 10 gunta, Sy.No.78/2 measuring 3 acre 10 gunta, Sy.No.80 measuring 6 acre 17 gunta, Sy.No.81

measuring 4 acre, Sy.No.118/3 measuring 1 acre 1 gunta, Sy.No.151/2 measuring 30 gunta, Sy.No.151/3 measuring 15 gunta, Sy.No.151/5 measuring 24 gunta, Sy.No.167/2 measuring 8 gunta, Sy.No.167/3 measuring 1 acre 5 gunta, Sy.No.169/1 measuring 21 gunta, Sy.No.169/2 measuring 25 gunta, Sy.No.170/2 measuring 20 gunta, Sy.No.173 measuring 6 gunta, Sy.No.170/6 measuring 7 gunta, all are situated at Marihal village, the some of the properties are standing in the name of Giriyappa Bheemrai Naik, Kallappa Bheemarai Naik, Basappa Bheemarai Naik, Nayakappa Bheemarai Naik, Babu Bheemarai Naik, Gangawwa W/o Bheemrai Naik, Tayawwa Hanumanth Naik, Neelawwa Srikant Patil, Basawwa Basappa Naik, Mallappa Ravindra Patil. Further, it could be seen that, the some of the suit schedule properties are standing in the name of defendant No.1 to 3. Ex.17 and Ex.P18 are computerized record of rights in respect of property RS No.171 total measuring 4 acre 10 guntas out of which 18 guntas is standing in the name of Basappa Bheemrayappa

Naik, Sy.No.184/1 total measuring 26 guntas out of which 20 gunta is standing in the name of Basappa Bheemappa Naik which are situated at Marihal Village. It is material to note that, the plaintiffs have pleaded and shown the entire extent of Sy.No.171 and 184/1, but the plaintiffs have not pleaded specific extent of the plaintiffs and defendants family in schedule 1 of the suit property. Ex.P19 to Ex.P33 are computerized record of rights, in respect of property Sy. No.195/1 measuring 3 gunta, Sy.No.184/2 measuring 26 gunta, Sy.No.195/6 measuring 5 gunta, Sy.No.218/9 measuring 13 gunta, Sy.No.218/8 measuring 25 gunta, Sy.No.195/11 measuring 7 gunta, Sy.No.218/2 measuring 34 gunta, Sy.No.218/3 measuring 1 acre 9 gunta, Sy.No.218/4 measuring 34 gunta, Sy.No.218/5 measuring 25 gunta, Sy.No.218/7 measuring 16 gunta, Sy.No.247/1 measuring 28 gunta, Sy.No.247/2 measuring 28 gunta, Sy.No.218/6 measuring 6 gunta, Sy.No.317 measuring 13 gunta, all are situated at Marihal village. Ex.P34 to Ex.P46 are panchayat extracts in respect of house and site

properties pertaining to property No.193/1, 193/2, 193/1/1, 193/1A, 907, 908, 909, 910, 911, 912, 913 which are standing in the name of Tayawwa, Naikappa, Siddanaik, Ramanaik, Saroja, Basappa, Shivappa. Ex.P47 is certified copy of mutation extract in respect of oral partition in some suit schedule properties only in favour of Basappa Bheemarai Naik, Ex.P48 is certified copy of mutation in respect of relinquished right of Bheemarai Hanumant Naik in favour of his sons in some suit schedule properties.

14. On the other hand, the defendant No.1 has contested the matter. Other defendants have not opposed the plaint of the plaintiffs by way of filing separate written statement. Neither the defendants did examine, nor the defendants did produce the documents before the Court to support of their case even this Court had given sufficient opportunity, hence the evidence of defendants had taken as Nil on 05.06.2023.

15. On perusal of the records, it apparent that the defendant No.1 has not disputed relationship of the

plaintiffs and defendants. Admittedly, the defendant No.1 has disputed joint family properties of plaintiffs and defendants. Instead of the defendant No.1 has taken the specific contention that, there was oral partition between plaintiffs and defendants and as per their partition they are absolute owners and separate possession their respective shares. Apart from, the defendant No.1 has taken 9th para of the written statement that, in the event of the Court come to the conclusion that, there is no any partition and metes and bounds in respect of some joint family properties, it may be allotted share of the defendant No.1 in all the said properties.

16. Let me discuss an ancestral properties and joint family properties of the plaintiffs and defendants are concerned, the plaintiffs have specifically pleaded in the plaint as the same, the plaintiff No.1 has deposed as consonance to the pleading of the plaint in her chief examination. Apart from, as per above discussion, the documentary evidence in respect of suit properties it is

revealing that some of the landed properties are standing jointly in the record of rights. It is undisputed fact that, Bheemarai Naik died on 01.04.1999 leaving behind his six sons and one daughter i.e., Mallawwa wherein father of the plaintiff No.2 to 4 and husband of the plaintiff No.1 i.e., Hanumanta Naik was died leaving behind the plaintiffs. It is relevant to note that, as per admission given by the plaintiff No.1 in her cross examination regarding Bheemarai Naik has also one daughter who was died leaving behind defendant No.6, thereafter the plaintiffs have brought the legal heir of deceased Mallawwa in the records as defendant No.6. The defendant No.1 has not taken that the suit is barred by non inclusion of the necessary parties and non impleadment of all the joint family properties. It is to be noted that, the same facts are undisputed by the defendant No.1.

17. In support of plaintiffs case, the plaintiffs have produced Ex.P1 to show their relationship to deceased Hanumant Naik. Further, the plaintiffs have produced

record of rights pertaining to the suit properties, some of the properties are standing jointly and some of the properties are standing separately. On perusal of the said records, it could be seen that, there is convincing material to show joint family properties and joint possession of the parties in the suit schedule properties. That being the fact, the plaintiffs have discharged their burden to prove joint family properties of the plaintiffs and defendants in the suit schedule properties. But, the defendants have not adduced any evidence to support of their contention. However, the evidence of plaintiff No.1 cannot be rejected.

18. In respect of oral partition of the plaintiffs and defendants is concerned, the plaintiffs have produced Ex.P47 and Ex.P48, it clearly reveals that the plaintiffs and defendants have not partitioned the suit schedule properties either by oral or registered in all the family properties. Instead, some of the properties are allotted to some member of the family. Therefore, oral partition of the plaintiffs and defendants in the year 1996 cannot be

believable and acceptable. It is clear that, the said contention of the defendant No.1 is clearly suffered by cogent evidence. Moreover, the plaintiffs have clearly stated cause of action for filing the suit that, the defendants No.1 to 3 got mutated their names in the record of rights over the suit schedule properties behind back of the plaintiffs in order to grab the valuable properties. The same has awarded by the plaintiffs recently. However, it could not be taken the contention of the defendant No.1 in respect of joint family properties and their legitimate shares in the suit schedule properties.

19. It is very interesting that, the suit schedule I property serial No.16 and 17 has shown total extent of the suit properties, but 18 gunta in Sy.No.171 and 20 gunta in Sy.No.184/1 are standing in the plaintiff's and defendants family. Other extent in Sy.No.171 and 184/1 are standing different family. However, total extent in Sy.No.171 and 184/1 are not acceptable. As such the plaintiffs and

defendants are entitled their shares in Sy.No.171 and 184/1 only extent of Naik family.

20. Even though, the defendant No.1 has taken specific contentions in written statement, the said contentions of the defendant No.1 has clearly suffered by oral as well as documentary evidence. In absence of material evidence on behalf of defendants, the contentions of the defendant No.1 cannot be acceptable. As the defendant contested the suit, an adverse inference can be drawn against the defendants U/Sec.114 of the Indian Evidence Act as per the decision reported in AIR 1999 S.C. 1441 (Vidhyadhar V/s. Mankikarao). Hence, considering the facts and circumstances of the case and considering no contra evidence by the defendants.

21. At this juncture, it is useful to refer to the decision reported in **1999 SAR (Civil) Page 431 in between Iswar Bhai C. Patel @ Bachu Bhai Patel versus Harihar Behera and another**, wherein it is held by the Hon'ble Supreme Court of India that, section 114 of

Evidence Act. *Evidence Act, 1872 - Section 114 - Appellant had abstained from entering the witness - No statement on oath in support of his pleading set out in the written statement - An adverse presumption has to be drawn against him.*" It is also held by the Hon'ble High Court of Karnataka in the decision reported in **ILR 1999 Karnataka 1524 in between A.V. Rangacharya and another versus Pillanjinappa and another** as under:

Evidence Act (1 of 1872), Section 114 - "*Where a party to the suit does not appear into the witness box and states their own case on oath and does not offer them self to be cross-examined by the other side, a presumption would arise that the case set up by their is not correct.*"

22. As I already discussed, in the present case on hand also though the defendant No.1 filed the written statement and cross-examined, the witnesses examined from the plaintiff's side, they have not entered into the witness box to state this case and also to rebut the oral and documentary evidence adduced from the plaintiff's

side. Therefore, the presumption could be drawn that the contention taken by the defendant is not correct.

23. In the light of above discussion, the plaintiffs have succeeded to prove that the suit properties are ancestral and joint family properties of plaintiffs and defendants. So far as, the plaintiffs are entitled to the share of Hanumant Bheema Naik who was husband of plaintiff No.1 and father of plaintiff No.2 to 4. As the same the defendants No.1 to 6 are entitled their respective shares separately in the suit schedule properties as 1/7th each and plaintiffs are entitled their legitimate share together 1/7th in the suit scheduled properties. Accordingly, this Court answered issue No.1 to 3 in the **Affirmative.**

24. ISSUE NO.4: For the aforesaid reasons, discussion made above, considering evidence and documents on record, I proceed to pass following:-

ORDER

The suit of the plaintiffs is hereby decreed with no costs.

It is decreed that the plaintiffs are collectively having 1/7th share together in the suit schedule I Sl.No.16 i.e., Sy.No.171 total measuring 4 acre 10 gunta out of which 18 gunta, Sl.No.17 Sy.No.184/1 total measuring 26 gunta out of which 20 gunta and other Sl.No.1 to 15 and 18 to 27 and the suit schedule II Sl.No.1 to 13.

The defendants No.1 to 6 are hereby entitled to 1/7th share each in the suit schedule I Sl.No.16 i.e., Sy.No.171 total measuring 4 acre 10 gunta out of which 18 gunta, Sl.No.17 Sy.No.184/1 total measuring 26 gunta out of which 20 gunta and other Sl.No.1 to 15 and 18 to 27 and the suit schedule II Sl.No.1 to 13.

**Considering the nature of suit
and relationship of the parties, no
order as to costs.**

Draw decree accordingly.

*(Dictated to the Stenographer, transcribed by her, transcript
corrected by me, and then pronounced in the open Court on this 23rd
day of June 23rd 2023*)*

**(Sri. Nagaraj Barki.)
III Addl. Civil Judge & JMFC,
Belagavi**

ANNEXURE

1. Witnesses examined by the plaintiffs:-

PW.1: Smt. Tayawwa Hanumant Naik.

2. Documents marked by the plaintiff:-

Ex.P.1	:	Surviving family members certificate
Ex.P.2 to 16	:	Computerized record of rights
Ex.P.17 to 33	:	Computerized record of rights
Ex.P.34 to 46	:	Gram Panchayat extracts
Ex.P.47 and 48	:	C/c of Mutation extracts

3. Witnesses examined by the defendants:-

Nil

4. Documents marked by the defendants:-

Nil

**(Sri. Nagaraj Barki.)
III Addl.Civil Judge & JMFC,
Belagavi.**