

IN THE COURT OF THE II ADDL CIVIL JUDGE & JMFC GOKAK

Present:- ROOPA MATTI,

B.Sc., LL.M.,

II Addl. Civil Judge & JMFC,

Gokak.

O. S. No.458/2006

DATED THIS THE 13th DAY OF OCTOBER-2022

1. Smt. Shevanti W/o Gangappa Ganeshwadi,

Age: 25 years, Occ: Agriculture,

R/o: Pamaladinni, Tal:Gokak, Dist:Belagavi.

.....Plaintiff

[By Sri.B.S.K., Advocate]

V/S

1. Gurusidda Beerappa Pujeri,

Age: 48 years, Occ: Agriculture,

R/o: Pamaladinni, Tal: Gokak.

2. Siddawwa W/o Gurasidda Pujeri

Age: 44 years, Occ: Household,

R/o: Pamaladinni, Tal: Gokak.

3. Smt. Mahadevi W/o Kareppa Santappagol

Age: 28 years, Occ: Household,

R/o: Pamaldinni, Tal: Gokak.

4. Ningawwa W/o Ningappa Mulangi

Age: 25 years, Occ: Household,

R/o: Pamaldinni, Tal: Gokak.



5. Basavaraj Gurasiddappa Pujeri
Age: 21 years, Occ: Agriculture,
R/o: Pamaldinni, Tal: Gokak.
6. Yallappa Gurasiddappa Pujeri
Age: 19 years, Occ: Agriculture,
R/o: Pamaldinni, Tal: Gokak.
7. Siddappa S/o Beerappa Pujeri
Age: 55 years, Occ: Agriculture,
R/o: Pamaldinni, Tal: Gokak.
8. Bharmappa S/o Siddappa Pujeri
Age: 30 years, Occ: Agriculture,
R/o: Pamaldinni, Tal: Gokak.
9. Beerappa S/o Siddappa Pujeri
Age: 28 years, Occ: Agriculture,
R/o: Pamaldinni, Tal: Gokak.
10. Shivaji S/o Siddappa Pujeri
Age: 17 years, Occ: Agriculture,
Minor R/by N/F defendant No.7.
11. Vithal S/o Siddappa Pujeri
Age: 15 years, Occ: Agriculture,
Minor R/by N/F defendant No.7.



12. Mayawwa W/o Siddappa Pujeri

Age: 50 years, Occ: Household,

R/o: Pamaldinni, Tal: Gokak.Defendants

(Defendant-1 S.S.K, Advocate)

(Defendant-2 to 6 S.S.M, Advocate)

(Defendant-7 to 12 P.M.H, Advocate)

Date of Institution of suit	:	01-12-2006		
Nature of suit	:	Partition and Separate Possession		
Date of commencement of Recording of evidence	:	05-08-2008		
Date of pronouncement of Judgment	:	13-10-2022		
Total Duration	:	Year	Months	Days
		15	10	12

JUDGMENT

The plaintiff has filed this suit for partition and separate possession against the defendants.

2. The brief facts of the plaintiff is that:-

The suit property is agricultural land bearing Sy.No.24/1 measuring 04Ac-26Gs, asst at Rs.4.56Ps, situated at Pamaladinni village, Tal: Gokak. This land being a full Survey number and can be easily identified by its Survey number, boundaries are not given. The market value of the suit property is 5,00,000/- and out of it the plaintiff share comes to Rs.35,711/-.



3. The plaintiff has furnished genealogy. The propositus Beerappa and his wife Mayawwa died long back leaving behind 3 sons as Class-I heirs. The first son Bharamappa died without marriage, therefore the defendant 1 and 7 are the only Class-I legal heirs to propositus Beerappa and his wife. During the life time of Beerappa he himself and his two sons ie., defendants No.1 and 7 together have formed a joint family. After death of Beerappa, defendants No.1 and 7 have continued the joint family. The plaintiff and defendants No.2 to 6 are the wife, daughters and sons of defendant No.1. Defendant No.8 to 11 are the sons of defendant No.7 and 12. The plaintiff and defendants have constituted Hindu joint family. The suit property is the joint family property of plaintiff and defendants. The plaintiff and defendants are in joint possession and enjoyment of the suit property. The suit property is the ancestral joint family property of plaintiffs and defendants. There is no partition between the plaintiff and defendants by metes and bounds. The defendant No.7 is used to manage the family affairs of the joint family consisting of himself, his brother defendant No.1. The defendant No.1 is acting under the tumb of the defendant No.7 as he is elderly male member of the family. The defendant No.7 is acting as the manager of the Hindu joint family. The defendant No.7 by taking undue advantage of acting as Karta of the family he got mutated the name of the defendants No.8 to 11 in the record of rights of the suit property behind the back and without notice to the



plaintiff, defendants No.1 to 6. The name of defendant No.8 to 11 are appearing in the record of rights illegally without being any exclusive title. The contents of M.E.No.8321 are all false and is illegal one. No partition was taken place as alleged in the said mutation entry. No deed of partition was came to be executed between defendant No.1 and 7 because no partition was taken place. The defendant No.1 has no right to effect the partition without the consent of the plaintiff and defendants No.2 to 6. The plaintiff and defendants No.2 to 6 have also got joint right, title and interest in the suit property. The defendants No.1 and 7 in collusion with each other have also got created the mutation entry. On the basis of the name of defendants No.8 to 11 in the Record of rights of the suit properties they are trying to oust the plaintiff and defendant No.2 to 6 from the joint possession of the suit property. Therefore, the plaintiff has obtained the records and found that the defendant No.7 to 11 have got entered their names illegally in the record of rights of the suit property. Therefore the plaintiff requested the defendant to get partition and to hand over her legitimate share in the suit property, but the defendants refused to effect partition. In view of the strained relations the defendants are not co-operating with the plaintiff in joint cultivation. Thus the plaintiff is constrained to file this suit for partition. It is submitted that the defendants No.1 and 7 have not right to effect partition in the suit property by excluding the plaintiff and



defendants No.1 to 6. The plaintiff and defendants No.1 to 6 together have got joint $\frac{1}{2}$ share and so also the defendant No.7 to 11 together have joint $\frac{1}{2}$ share in the suit properties. Thus out of the joint share the plaintiff has got $\frac{1}{14}$ th joint share in the suit property and so also the defendants No.1 to 6 together have got $\frac{6}{14}$ th joint share in the suit property and the defendants No.8 to 11 together have got joint $\frac{1}{2}$ share in the suit properties. Hence, this suit.

4. The suit summons served to defendants, the defendants appeared through their counsels. The defendant No.1 and 7 have filed written statement separately and defendants No.8 to 12 have adopted written statement of defendant No.7. The defendants No.2 to 6 though appeared they have not filed their written statement.

5. Defendant No.1 in his written statement denied the averments of the plaint and submitted that the defendants No.1 and 7 are full brothers and there was an oral partition in the suit property long back and defendants No.1 and 7 are cultivating their respective strips in suit lands separately and enjoying the sale proceeds. The defendant No.2 has left the house about 30 years back and started living with one Mallappa Siddappa Sampagar, as there was no cordial relation of defendants No.1 and 2. The defendant No.2 in order to give harassment to defendant No.1 illegally



has got filed a false maintenance petition No.112/1998 against the defendant No.1. After hearing, the JMFC Court Gokak has rejected the claim of defendant No.2. Further submitted that defendant No.1 was in need of money for his legal necessity. Therefore, he was intended to sell part of his share in the suit property and has sold 1Ac-15Gs of land to one Bhimappa Kallappa Hullikatti in the year 1997, as the name of defendant No.7 is appearing in the record of right as a joint owner, defendant No.7 has also signed the sale deed in order to avoid complications. Thereafter in the year 2000 the present defendant No.1 was in need of money and has borrowed the sum of Rs.1,00,000/- from defendant No.7. The defendant No.1 has not repaid the said amount to defendant No.7 and hence, the defendant No.1 has voluntarily waived his right in favour of present defendants No.8 to 11 and M.E.No.8321 was duly effected and defendants No.8 to 11 were/are in actual peaceful possession and enjoyment of the suit property and the plaintiff is not at all in possession of the suit property at any point of time. Further submitted that the plaintiff was given in marriage long back and so also in view of recent amendment of Hindu Succession Act, the plaintiff is not entitled to any share of the suit property. Further submitted that as the relation between defendants No.1 and 2 have strained long back, in order to take revenge against the family of defendants No.1 and 7, in active collusion with her henchmen, defendant No.2 has got filed this false suit



in collusion with the plaintiff. Further submitted that there is no cause of action to file this suit and Court fee paid by the plaintiff is not proper one as she was/is not at all in possession in the suit land. Further submitted that the plaintiff has filed false and vexatious suit against defendants and put them to make expenditures and use to attend all the while from Pamaladinni to Gokak by leaving their agricultural work and hence, the defendants have sustained heavy loss and it will amount to mental agony and harassment and therefore prayed to dismiss the suit with costs and compensatory costs of Rs.5000/-.

6. Defendant No.7 filed written statement, the same is adopted by defendants No.8 to 12. In the written statement, the averments of the plaint are denied and it is submitted that as per the family arrangement the property R.S.No.24/1 measuring 03Ac-11Gs of Pamaladinni village has been allotted to the defendants No.8 to 11 on 06-11-2004 under oral partition. The defendant No.1 already sold 01Ac-15Gs of land from the above said R.S.No.24/1 to Bhimappa Kallappa Hulikatti. Therefore, the property now in possession of Defendant No.8 to 11 is their independent property and the plaintiff was/is well aware of this fact and has kept quiet for the last 6 years and under the recent amendment of Hindu Succession Act 2005 the plaintiff is not entitled to any share in the suit property, as partition is already effected between defendants No.1 and 7 prior to 20-



12-2004 and hence, suit of the present plaintiff is not maintainable in the eye of law. Further submitted that defendant No.1 has sold 01Ac-15Gs of land to one B.K. Hoolikatti, unless until he is made as necessary party to this proceeding, the suit is not maintainable and plaintiff has purposely not shown some of the persons in the genealogy, hence, the suit of the plaintiff is bad for non joinder of necessary party. Further submitted that the defendant No.2 has left the company of defendant No.1 long back and started living with one Mallappa Sampagar along with her children. She has got landed property R.S.No.49/1G, 115/1+2/B, measuring 05Ac-01Gs in the said village. She has got filed a false maintenance petition against defendant No.1 in the year 1988 and in the said petition no maintenance was allotted to her and since then no recovery proceedings were initiated by defendant No.5 against defendant No.1. Since from 1988 or even prior to it plaintiff and defendants No.2 to 6 were/are never in possession of the suit land till this day, as they were ousted for a period of more than 30 years from the suit property and therefore, the present suit is not maintainable in the eye of law. Further submitted that there is no cause of action to file this suit and Court fee paid by the plaintiff is not proper one. Further submitted that the plaintiff has filed false and vexatious suit against defendants and put them to make expenditures and use to attend all the while from Pamaladinni to Gokak by leaving their agricultural



work and hence, the defendants have sustained heavy loss and it will amount to mental agony and harassment and therefore prayed to dismiss the suit with costs and compensatory costs of Rs.10,000/-

7. On the basis of the rival pleadings of the parties, the following issues were framed by my predecessor.

ISSUES

1. Whether the plaintiff proves that herself and defendants constitute undivided joint Hindu family and the suit property is their ancestral property ?
2. Whether the plaintiff further proves that herself and defendants are in joint possession and enjoyment of the suit property ?
3. Whether the plaintiff further proves that the defendant No.1 and 7 in collusion with each other have illegally got mutated the names of defendants No.8 to 11 to the suit property as alleged in para No.3 of the plaint ?
4. Whether the defendants No.1 and 7 proves that as per the family arrangement under an oral partition dated: 06-11-2004 R.S.No.24/1 measuring 3Ac-11Gs of Pamaladinni has been allotted to defendants No.8 to 11 ?
5. Whether the defendants No.1 and 7 further proves that the defendant No.1 has already sold 1Ac-15Gs of land in Sy.No.24/1 to Bhimappa Kallappa Hulikatti ?
6. Whether the defendant No.7 further proves that already



the partition has been effected between defendant No.1 and 7 prior to 20-12-2004 ?

7. Whether the suit of the plaintiff is bad for non-joinder of the necessary parties ?
8. Whether the payment of Court fee is sufficient ?
9. Whether the plaintiff is entitled to the reliefs sought for ?
10. What order to decree ?

ADDITIONAL ISSUE

1. Whether defendant No.1 proves that he has waived his right of share over the suit properties by borrowing Rs.1,00,000/ from defendant No.7 ?

9. The plaintiff in order to prove the case, herself got examined as PW-1 and got marked Ex.P.1 to 3 and another witness as PW-2. The defendant No.1 examined as DW-1 and got marked D-1 to D-41 and defendant No.8 examined as DW-2 and another witness as DW-3.

10. Heard both sides and perused the materials placed on record and written arguments.

11. My findings to the above issues are as follows;

Issue No.1: Negative

Issue No.2: Negative

Issue No.3: Negative



Issue No.4: Affirmative

Issue No.5: Affirmative

Issue No.6: Affirmative

Issue No.7: Affirmative

Issue No.8: Affirmative

Issue No.9: Negative

Additional Issue No.1: Affirmative

Issue No.10: As per order for the following.

::REASONS::

12. Issue No.1 to 6 and Additional Issue No.1: Since all the issues are interlinked with each other, they are taken together for discussion at once for avoiding repetition of facts.

It is the case of the plaintiff that suit schedule property is ancestral property and she and defendants are in joint possession and enjoyment of the suit property and hence, she is entitled to 1/14th share in the suit property by effecting partition by metes and bounds. On the other hand defendant No.1 and defendants No.7 to 12 have filed their WS. It is the specific contention of them that defendant No.2, wife of defendant No.1 has left the company of defendant No.1 about 30 years back along with children and she is in illicit relation with one Mallappa Siddappa Sampagar of Pamaladinni village. Plaintiff being her



daughter has filed this suit to harass the defendants No.1, 7 to 12. The defendant No.2 has also filed maintenance petition against defendant No.1 for herself and plaintiff and defendants No.3 to 5, among which the maintenance amount of Rs.100/- per month was granted to only defendant No.5. Thereafter, the defendant No.1 has made criminal revision petition 311/1995 before III Addl. District and Session Judge Belagavi. The maintenance granted to defendant No.5 was confirmed. Even thereafter the defendant No.5 has not initiated any recovery proceedings against defendant No.1. It is also contended that there was an oral partition of suit property between defendants No.1 and 7 long back. The defendants No.1 and 7 are cultivating and enjoying their respective strips. The defendant No.1 to meet his legal necessity has sold 01Ac-15Gs out of suit land to one Bhimappa Kallappa Hulikatti. Further the defendant No.1 borrowed the sum of Rs.1,00,000/- from defendant No.7 and has not repaid the said amount and hence, he voluntarily waived his right in favour of defendants No.8 to 11 and M.E.No.8321 was duly effected. They further



contended that the plaintiff was never in joint cultivation and possession of suit property and suit is bad for non joinder of necessary party and partition is already effected between defendants No.1 and 7 prior to 20-12-2004 and also the plaintiff and defendants No.2 to 6 were ousted for period of more than 30 years from the suit property and therefore, the suit is not maintainable.

13. In order to prove the case plaintiff herself examined as PW-1 by filing affidavit in lieu of examination in chief and reiterated the averments of the plaint and got marked Ex.P.1 to P.3. Ex.P.1 is the R/R of R.S.No.24/1 of Pamaladinni village. Ex.P.2 certified copy of Mutation entry No.1470, 1472, 1481, Ex.P.3 certified copy of Mutation entry No.8614. During her cross examination she admitted that her mother has filed maintenance petition against defendant No.1. Further stated that defendant No.1 has not attend her marriage, her mother performed her marriage. Further admitted that her mother has got 5Ac irrigated land in Pamaladinni village apart from that she has denied the suggestions put forth by advocate for defendants No.1,7 to12.



14. One Satteppa Yamanappa Navalagi examined as PW-2 who knows plaintiff and defendants in the suit and filed Affidavit in lieu of examination in chief, where he stated that plaintiff and defendants are members of Hindu joint family, they are in joint possession and enjoyment of suit property situated at Pamaladinni village. The suit property is ancestral joint family property of plaintiff and defendants and plaintiff is cultivating the suit property jointly along with defendants and there is no partition between them. During his cross examination, he stated that plaintiff resides near his house at the farm belonging to Pujari. He has denied the suggestions put forth by advocate for defendant No.1 and 7 to 12.

15. To prove their case defendant No.1 examined as DW-1 and got marked Ex.D1 to D.41. Defendant No.8 examined as DW-2 and one Kempanna Tukanatti examined as DW-3. Defendants No.2 to 6 have not lead their evidence.

16. The defendant No.1 examined as DW1 by filing Affidavit in lieu of examination in chief and reiterated the averments of his written statement and got marked Ex.D.1 to D.41,



Ex.D.1 is the C/C of M.E.No.5865, where the defendants No.1 and 7 have mutated the name of their brother deceased Bharamappa through varadi dtd: 23-04-1986, Ex.D.2 is the certified copy of M.E.No.8321, where the defendant No.1 has given his right over the remaining suit property in the name of defendants No.8 to 11 through apasat vatni dtd: 10-01-2000, Ex.D.3 is the certified copy of M.E.No.7851, where defendant No.1 has sold his share to Bhimappa Kallappa Hoolikatti, Ex.D.4 is the certified copy of criminal revision petition No.311/1995, where defendant No.1 has challenged the award of maintenance of Rs.100/- to defendant No.5. Ex.D.5 is the order passed in Cri.rev.No.311/1995 passed by III Addl. Session Judge Belagavi, dtd: 16-08-2001. Ex.D.6 is the record of rights of Sy No.24 of Pamaladinni village, Ex.D.7 is the Record of rights of R.S.No.115/1+2/2 of Pamaladinni village standing in the name of defendant No.2, Ex.D.8 is the Record of rights of R.S.No.49/1G standing in the name of defendant No.2, Ex.D.9 is the birth certificate of son of defendant No.2 where her name appeared as Siddavva Mallappa Sampagar.



Ex.D.10 is the irrigation rotation card, Ex.D.11 to Ex.D.28 are the Tax paid receipts, Ex.D.29 is water bill, Ex.D.30 to Ex.D.41 are the Sugarcane slips. When the DW-1 was cross examined by advocate for plaintiff he stated that plaintiff is not his daughter but admitted the relation with defendants No.2 to 12. About 30 years back from the date of deposition there was partition between him and defendant No.7. Apart from this, he has denied all the suggestions put forth by the advocate for plaintiff.

17. The defendant No.8 examined as DW-2 and filed affidavit in lieu of examination-in-chief. In his affidavit he has stated that the suit land R.S. No.24/1 was previously the ownership of one Smt.Lakkavva w/o Ittappa Pujeri. The father of defendant no.1 and 7 has purchased the suit land from her under a registered sale deed on 28/03/1957 for a consideration of Rs.500/-. The name of father of defendants no. 1 and 7 was came to be mutated under M.E. No.1472 of Pamaladinni village. Hence the suit land was the self acquired property of father of defendant no.1 and 7. Hence the suit land was/is not the coparcenary property of



plaintiff and defendants. The defendant no.1 and 7 have succeeded after the death of their father and hence the suit land was/is the self acquired and joint family property of defendants no.1 and 7. Hence neither plaintiff nor the defendants no.2 to 6 had/have no sort of any right,title or interest in the suit land during the lifetime of defendant no.1. Hence the suit of the plaintiff is not maintainable. Further stated that, there was an oral partition between defendant no.1 and 7 in the suit property long back. They are cultivating and enjoying their respective strips. The defendant no. 1 has sold 1A-15G out of land to Bhimappa Kallappa Hulikatti. Further stated that, his uncle was in need of money for his legal necessity and has took an amount of Rs.1,00,000/-from his father about 10 years back and has not repaid the said amount hence his uncle has waived his right in the suit property in their favour and M.E.No.8321 was duly effected and they are in actual passession and enjoyment of the suit property. The plaintiff was/is not at all in possession of the suit property at any point of time. The plaintiff and defendants no.2 to 6 have



left the family of his uncle about 30 years back and started residing with one Mallappa Sampagar, hence they have been ousted from the suit land for more than 12 years hence the suit is barred by law. Further stated that they are growing sugarcane and maize crop in the suit property and enjoying sale proceeds and they are also paying the land revenue of the suit property regularly. when advocate for plaintiff cross examined him he denied all the suggestion put forth to him.

18. One Kempanna Pundalika Tukkanatti examined as DW-3 by filing affidavit in lieu of examination in chief. In his affidavit he has submitted that he knows plaintiff and defendants. There was partition between defendants No.1 and 7 with respect to suit property and they have got divided R.S.No.24/1 measuring 4Ac-26Gs into 02Ac-13Gs each and defendant No.1 has sold his 01Ac-15Gs out of his share to Bhimappa Kallappa Hoolikatti and in the year 2000 he has borrowed Rs.1,00,000/- from defendant No.7 for his legal necessity and not repaid the same and hence,



he has waived his right of remaining 37Gs in the name of defendants No.8 to 11. Till today the defendants No.8 to 11 are in possession in the said 37Gs land. The plaintiff and defendants No.2 to 6 are never in possession of the suit land. They have left the family of defendant No.1 about 30 years back. The Advocate for plaintiff cross examined him, he denied all the suggestions put forth to him.

19. On analysis of the materials available on record there is no dispute between parties about their relationship. Admittedly they belong to one family. They have common propositus by name Beerappa and his wife Mayavva who deceased long back leaving behind 3 sons Bharamappa, Siddappa (defendant No.7) and Gurusidda (defendant No.1). Among them Bharamappa died without marriage therefore, defendants No.1 and 7 are the only Class-I legal heirs to propositus Beerappa. Plaintiff and defendants No.3 to 6 are daughters and sons of defendant No.1 and 2. Defendants No.12 is wife of defendant No.7 and defendant No.8 to 12 are sons of defendants No.7 and 12. The defendants No.1, 7 to 12 contended that the suit property R.S.No.24/1 was



purchased by father of defendants No.1 and 7 from one Lakkavva W/o Ittappa Pujeri under a registered sale deed on 28-03-1957 for a consideration of Rs.500/- the name of father of defendants No.1 and 7 mutated under ME No.1472 of Pamaladinni village. Hence, the suit land is self acquired property of father of defendants No.1 and 7. Hence, the suit land was/is not coparcenary property and defendants No.1 and 7 have succeeded after the death of father and hence, the suit land was/is the self acquired and joint family property of defendants No.1 and 7. Neither plaintiff nor the defendants No.2 to 6 had/have no sort of any right, title or interest in the suit land during life time of defendant No.1. Further contended that there was an oral partition in between defendants No.1 and 7 in the suit property long back. The defendants No.1 and 7 are cultivating and enjoying their respective strips. The defendant No.1 has sold 01Ac-15Gs out of suit land to one Bhimappa Kallappa Hulikatti. Further the defendant No.1 by taking amount of Rs.1,00,000/- from defendant No.7 for his legal necessity has waived his right in the suit property in favour of



defendants No.8 to 11 and M.E.No.8321 was duly effected. The plaintiff was/is not at all in possession of the suit property at any point of time. The plaintiff and defendants No.2 to 6 have left the family of defendant No.1 about 30 years back and residing with one Mallappa Sampagar. Hence, the plaintiff and defendants No.2 to 6 have been ousted from the suit land for more than 12 years and suit of the plaintiff is barred by law. On the other hand, the defendants no.2 to 6 though appeared before the court, they have not filed their written statement and not even cross examined PW-1 and PW-2 and DW-1 to DW-3 and also they have not lead any evidence on their behalf. The defendant No.1 has produced Ex.D.9 where the name of defendant No.2 appears as Siddavva Mallappa Sampagar. The plaintiff and defendants no.2 to 6 have not challenged the said document. Therefore, it appears that the defendant no.2 has left the company of defendant No.1 along with her children. The same is also evident from Ex.D.4 and 5. This fact is also admitted by the plaintiff in her cross examination and also she has admitted that the defendant



No.1 has not attended her marriage and defendant No.2 has performed her marriage. Further, as per Ex.D.1 the suit property belongs to defendant No.1 and 7. As per Ex.D.3 the defendant No.1 has sold his part of land to Bhimappa Kalappa Hulikatti. As per Ex.D.2 the defendant No.1 has given the remaining land of his share to defendants No.8 to 11. In Ex.D.6 their names are appearing. Ex.D.10 to D.41 shows that the defendants No.1, 7 to 11 are in possession of the suit property. The burden lies on the plaintiff to show that the suit property was ancestral property and they are in joint possession and enjoyment of the suit property and defendants No.1 and 7 have illegally got mutated the names of defendants No.8 to 11 to the suit property. But, the plaintiff has not produced any oral or documentary evidence to show that the suit property is ancestral property. In her cross examination has stated that she is not aware that how her family got the property. According to defendants No.1 and 7 to 12 the suit property was purchased by father of defendants No.1 and 7 and after the death of their father their names were entered in the suit



property and hence, it is a separate property in the hands of defendants No.1 and 7. Also according to them there was oral partition between defendants No.1 and 7 and they have got divided the suit property equally between defendants No.1 and 7. DW-3 also deposed the same. The plaintiff has denied the same but not disproved the said fact. The defendants No.2 to 6 have neither supported the case of plaintiff nor denied the same. According to Sec.6 of Hindu Succession Act, the proviso appended to it reads provided that nothing contained in this section shall affect or invalidated any disposition or alienation including any partition or testamentary disposition of property which had taken place before 20-12-2004. In the present case the defendants No.1 and 7 have got divided their share and defendant No.1 has sold his part of land to one Bhimappa Kalappa Hulikatti in the year 1997 and the plaintiff has not challenged the said sale and not even stated about the said fact in her plaint. She has produced Ex.P.3 where the name of Bhimappa Kalappa Hulikatti is appeared but there is no mention of the said fact in her plaint. Hence, the plaintiff



has failed to prove that the suit property is ancestral property and she is in joint possession and enjoyment of the suit property and also defendants No.1 and 7 in collusion with each other have illegally got mutated the names of defendants No.8 to 11 to the suit property. On the other hand the defendants No.1 and 7 have proved that there was family arrangement under an oral partition of suit property and defendant No.1 has already sold his 01Ac-15Gs of land in suit property to Bhimappa Kalappa Hulikatti and defendant No.1 has waived his right of share over the suit property. Therefore, in view of above discussion I answer issues No.1 to 3 in negative and Issue No.4 to 6 and Additional Issue No.1 in affirmative.

20. Issue No.7:- As discussed above the defendant No.1 has proved that he has sold his part of land to one Bhimappa Kalappa Hulikatti and his name is also entered in the record of rights of the suit property. But, he is not made as party to the suit, who is also a necessary party to the suit. As such the suit is bad for non-joinder of necessary party. Therefore, I answer issue No.7 in affirmative.



21. Issue No.8:- The plaintiff has paid Rs.15/- as per Sec.35(2) of the Karnataka Court Fees and Suits valuation Act 1958 as per the calculation made by her over her share in the suit property. Therefore, I answer Issues No.8 in affirmative.

22. Issue No.9:- In view of the plaintiff failed to prove her case, she is not entitled to reliefs as sought for in this suit. Therefore, I answer Issues No.9 in Negative.

23. Issue No.10:- As per the above discussion, I proceed to pass the following;

ORDER

The suit of the plaintiff is hereby dismissed.

There is no order as to costs as the parties are relatives.

Draw decree accordingly.

(Dictated to the Stenographer directly on computer, computerized by him corrected and then pronounced by me in the Open Court today the 13th day of October 2022)

Sd/-

(Roopa Matti)
II Addl. Civil Judge & JMFC.,
Gokak.



ANNEXURE

I. LIST OF WITNESSES EXAMINED FOR THE PLAINTIFF:

PW-1 :- Shevanti Gangappa Ganeshwadi.

PW-2 :- Satteppa Yamanappa Navalagi.

II. LIST OF DOCUMENTS EXHIBITED FOR THE PLAINTIFF:

Ex.P.1:- R/R of R.S.No.24/1 of Pamaladinni village.

Ex.P.2:- ME. No.1470, 1472, 1481.

Ex.P.3:- ME.No.8614.

III. LIST OF WITNESSES EXAMINED FOR THE DEFENDANT:

DW-1 :- Gurusidda Beerappa Pujeri.

DW-2 :- Bharamappa Siddappa Pujeri

DW-3 :- Kempanna Pundalik Tukkanatti.

IV. LIST OF DOCUMENTS EXHIBITED FOR THE DEFENDANT:

Ex.D.1: C/C of M.E.No.5865.

Ex.D.2: C/C of M.E.No.8321.

Ex.D.3: C/C of M.E.No.7851.

Ex.D.4: C/C of Petition in CrI.Rev.Petition No.311/1995,

Ex.D.5: Order passed in CrI.Rev.Petition No.311/1995.

Ex.D.6: Record of rights of Sy No.24 of Pamaladinni
village,



Ex.D.7: Record of rights of R.S.No.115/1+2/2 of
Pamaladinni village.

Ex.D.8: Record of rights of R.S.No.49/1G.

Ex.D.9: Birth certificate.

Ex.D.10: Irrigation rotation card,

Ex.D.11 to Ex.D.28: Tax paid receipts.

Ex.D.29: Water bill.

Ex.D.30 to Ex.D.41: Sugarcane slips.

Sd/-

(Roopa Matti)
II Addl. Civil Judge & JMFC.,
Gokak.