

IN THE COURT OF PRINCIPAL CIVIL JUDGE AND JMFC

GOKAK

PRESENT

SRI. LOKESHA M.G. B.A., LL.B.

DATED THIS THE 15th SEPTEMBER 2017.

O.S. 637/2010

BETWEEN

1. Smt. Laxmi w/o. Basavaraj Kadakol,
Age : 22 years, Occ : Agriculture & Household work,
R/o : Upaaratti, now at Duradundi, Tq : Gokak.
2. Kumar. Saagar S/o. Basavaraj Kadakol,
Age: 1 year & 5 months, since minor represented
by His natural mother plaintiff No.1

Plaintiffs

[By Sri. MRB Advocate]

AND

1. Musheppa s/o. Ramappa Kadakol,
Age : 79 years, Occ : Agriculture,
R/o : Upparatti, Tq : Gokak,
2. Ramappa s/o. Musheppa Kadakol,
Age : 51 years, Occ : Agriculture,
R/o : Upparatti, Tq : Gokak,
3. Yallappa s/o. Musheppa Kadakol,
Age : 40 years, Occ : Agriculture & employee,
R/o : Upparatti, Tq : Gokak,

4. Rangappa s/o. Musheppa Kadakol,
Age : 38 years, Occ : Agriculture,
R/o : Upparatti, Tq : Gokak,
5. Pandappa s/o. Musheppa Kadakol,
Age : 35 years, Occ : Agriculture,
R/o : Upparatti, Tq : Gokak,

Defendants

(Defendants by MGS, Advocate)

Date of Institution of suit	: 15-09-2010
Nature of the suit	:Declaration,Partition & Separate Possession
Date of commencement of recording of evidence	: 14-06-2012
Date of pronouncement of judgment	: 15-09-2017
Total duration	: 07Yr. 00M/s 00D/s

JUDGMENT

1. It is the case of the plaintiffs that Sy.No.424/26 measuring 01Ac-04Gs, Sy.No.424/25 measuring 01A-15Gs, Sy.No.8 measuring 01Ac-14Gs and Sy.No.9 measuring 01Ac-34Gs at Upparatti village Gokak taluka are the suit properties.

Defendant-1 and deceased Lakkavva are the father and mother of defendants-2 to 5 and deceased Basavaraj. Plaintiff-1 is the legally wedded wife of deceased Basavaraj. Plaintiff-2 is son of plaintiff-1 and deceased Basavaraj. Plaintiff-2 born on 6-4-2009. The suit properties are ancestral joint family properties of plaintiffs and defendants and they are in joint possession and enjoyment of the suit properties. There is no partition between the plaintiffs and defendants in respect of suit properties and even in the lifetime of Basavaraj, there was no partition. Deceased Basavaraj was serving in HINDALCO factory and he died on 24-9-2008 leaving behind the plaintiffs as his legal heirs. Previously, plaintiffs and defendants filed suit No.709/2008 in respect of other family properties by suppressing the material facts and entered into illegal compromise by committing fraud on plaintiff-1 who was also party in that suit. Thereafter, the plaintiff-1 filed application to recall the said compromise and in the said proceeding, the further execution and operation of the compromise decree was stayed.

2. The present suit properties are not subject matter of that suit. The defendants have also filed collusive suit in O S No.17/2009 on 6-1-2009 and immediately on 7-1-2009, they entered into the compromise by suppressing materials facts without knowledge of the plaintiff-1 and with malafide

intention to deprive the legitimate share of the plaintiffs in respect of suit properties. The compromise decree passed in O S No.17/2009 is not binding upon the plaintiffs. The defendants got entered their names in record of rights of suit properties by virtue of said compromise decree. The deceased Basavaraj was also not party to the said compromise in O S No.17/2009. The defendants are trying to dispossess and disturb the joint possession of the plaintiffs in respect of suit properties by taking advantage of the compromise decree and are denying the share of the plaintiffs. Therefore, it is not possible for the plaintiffs to remain with the defendants. It is also requested by the village elders to the defendants to effect partition and to hand over the separate possession to the plaintiffs. The defendants have not heeded the request. Therefore the suit is filed.

3. The defendants have appeared through advocate. The defendant-4 has filed written statement and other defendants have adopted the said written statement. It is stated in the written statement that the suit is false, the suit is not maintainable, final decree has been obtained before the Lok Adalat by the defendants and hence, the suit is also not maintainable. It is denied that the plaintiff-1 is legally wedded wife of deceased Basavaraj and plaintiff-2 is son of deceased Basavaraj and plaintiff-1. It is also denied that the

plaintiff-2 born on 6-4-2009. It is also denied that there is no partition between the plaintiffs and defendants in respect of suit properties. It is stated that it is true that the deceased Basavaraj was serving in HINDALCO factory and died on 20-4-2008 . It is denied that the plaintiffs are sole legal heirs of deceased Basavaraj. The defendants have denied all other averments of the plaint. It is also denied that the defendants have filed collusive suit O S No.17/2009 without knowledge of the plaintiffs. It is also denied that the compromise decree in O S No.17/2009 is not binding upon the plaintiffs. The cause of action is false one. It is submitted that the suit in O S No.17/2009 in respect of suit properties was compromised between the defendants and they have divided the suit properties as per the final decree passed in the said suit and are in actual possession and the plaintiffs have no right to challenge the decree. The decree was passed in the Lok Adalat and hence, the suit is not maintainable and it is to be dismissed with cost.

4. On the basis of pleadings of the parties, the following issues are framed:

1. Whether the plaintiffs prove that they are the legally wedded wife and son of deceased Basavaraj?

2. Whether the plaintiffs further prove that they and defendants have constituted joint family, suit properties are joint family properties?
 3. Whether the plaintiffs further prove that there is no partition in the joint family properties?
 4. Whether the suit is maintainable in view of specific bar contended in Section 96(3), Order 23 Rule 3A of CPC and Section 21(2) of Legal Services Authority Act, 1987?
 5. Whether the plaintiffs are entitled for the relief's sought for?
 6. What order or decree?
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5. To prove the case, the plaintiff-1 has been examined as PW1 and got examined PW.2 to 4 and got marked documents as Ex.P1 to 24. Per contra, Defendants have not led evidence.
 6. Heard arguments. Perused the materials on record.
 7. By considering the evidence and arguments, I answer the following issues as under :
 1. Issue No.1: In the affirmative.
 2. Issue No.2: In the affirmative.

3. Issue No.3: Partly in the affirmative
4. Issue No.4: In the affirmative
5. Issue No.5: In the affirmative
6. Issue No.6: As per the final order for the following :

REASONS

8. **Issue No. 1 :** It is the duty of the plaintiffs to prove that they are the legally wedded wife and son of deceased Basavaraj. To prove the same, plaintiff-1 is examined as PW.1 and got examined PW.2 to 4 in support of her case. PW.1 has stated in her evidence that she is legally wedded wife of deceased Basavaraj and plaintiff-2 is son of deceased Basavaraj. It is stated that plaintiff-2 born on 6-4-2009 and the said Basavaraj died on 24-09-2008. PW.2 to 4 have also deposed that the plaintiffs are the legally wedded wife and son of deceased Basavaraj. The defendants have not brought the evidence of PW.1 to 4 to test and to destroy by way of cross-examination. Therefore, their evidence remains unchallenged since there is no rebuttal evidence on the record adduced by the defendants. Apart from these, there is documentary evidence on the record to say that the plaintiffs are the wife and son of deceased Basavaraj. Ex.P.10 is the birth certificate issued by the concerned competent authority. On perusal of this document, it is clear that the name of plaintiff-2 is mentioned in the said document and

he born on 06-04-2009. It is also mentioned about the names of parents that the mother name is Laxmi and father name is Basavaraj. Ex.P.11 is the identity card issued by ESI Corporation in the name of deceased Basavaraj. On perusal of this document, it appears that the deceased Basavaraj is son of Musheppa, the defendant-1 in this case. It is also mentioned in the said document that the plaintiffs are the wife and son of deceased Basavaraj and defendant-1 is his father and deceased Lakkavva is his mother. Ex.P.12 is the ration card issued in the name of plaintiff-1. In this document also, it is mentioned about the name of deceased Basavaraj along with the plaintiffs-1 and 2. Ex.P.13 and 14 are the Aadhar cards in the names of plaintiffs. On perusal of these documents, it is clear that the plaintiffs are the legally wedded wife and son of deceased Basavaraj. Ex.P.15 is the voter identity card in the name of plaintiff-1, it shows that the deceased Basavaraj is husband of plaintiff-1. Ex.P.16 to 18 are the income certificate, reservation certificate, residential certificate issued in the name of plaintiff-1. They also show that the deceased Basavaraj is the husband of plaintiff-1. Ex.P.19 is document issued by the Child Development Planning Officer. It also shows that the plaintiff-1 is the wife of deceased Basavaraj. Ex.P.20 is the marriage invitation card. It shows that the plaintiff-1 got marriage with deceased Basavaraj on 25-3-2007. Ex.P.21

and 22 are the achievement cards issued by the concerned school in the name of plaintiff-2. On perusal of these documents also, I am of the opinion that the plaintiff-2 is the son of plaintiff-1 and deceased Basavaraj. In these documents also, the date of birth of plaintiff-2 is mentioned as 06-04-2009 which are in consonance with Ex.P.10. Ex.P.23 and 24 are the bank passbooks issued in the name of plaintiffs by the Canara Bank. They are the documents pertaining to the year 2008 and 2009. On perusal of these documents, I am of the opinion that the plaintiffs are the legally wedded wife and son of deceased Basavaraj.

9. It is stated in the pleading that the plaintiff-2 born on 06-04-2009. It is also stated in the pleading that the said Basavaraj, who died on 24-09-2008. For these, the help of Section 112 of Indian Evidence Act can be taken into consideration and it can be considered as conclusive proof. *If the person was born during the continuance of a valid marriage between his mother and any man or within 280 days after its dissolution and the mother remaining unmarried, then it can be considered as conclusive proof, that he is legitimate son of that man unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten.* In this case, the defendants have not shown that the plaintiff-1 and deceased

Basavaraj had no access each other at any time. Moreover, plaintiff-2 born on 6-4-2009 within 280 days of death of said Basavaraj, who died on 24-09-2008. Therefore, I am of the opinion that the plaintiff-2 is the son of deceased Basavaraj and plaintiff-1. The defendants have stated in their written statement that the said Basavaraj died on 20-04-2008. But, they have not produced any cogent evidence to show that the said Basavaraj died on 20-04-2008. Therefore, their version is not believable. Moreover, there is presumption in respect of the legitimacy in favour of the plaintiffs.

10. Therefore by considering the oral evidence and Ex.P.10 to 24, I am of the opinion that the plaintiffs are the wife and son of deceased Basavaraj. There is no evidence on the record to say that the plaintiffs are not related to deceased Basavaraj. Moreover, the defendants have not also stated that the deceased Basavaraj is not related to them. Therefore, it can be considered that they have impliedly admitted that the deceased Basavaraj is related to them. The defendants have simply denied that the plaintiffs are not related to deceased Basavaraj. But, they have not adduced any evidence to destroy the version of the plaintiffs. Therefore, the version of the defendants is not sustainable in this case. Therefore, I am of the opinion that the plaintiffs have proved that they are related to deceased Basavaraj. Accordingly, I answer this issue in the affirmative.

11. **Issue Nos.2 & 3:** By considering the facts and evidence on the record, these issues are taken up together to avoid repeated discussion. The plaintiffs have already proved that they are related to deceased Basavaraj. In Ex.P.11, it is clearly mentioned that the said deceased Basavaraj is the son of Musheppa Kadakol and deceased Lakkavva. In the said document, it is clearly mentioned about the relationship of deceased Basavaraj with the plaintiffs, with defendant-1 and deceased Lakkavva. Therefore, I am of the opinion that the deceased Basavaraj is the son of defendant-1 and brother of defendants-2 to 5. Therefore, I am of the opinion that the plaintiffs have constituted joint family with the defendants. The defendants have not produced any documents contrary to Ex.P.11 and they have not discredited the evidence on the record in favour of the plaintiffs. Therefore, I opine that the plaintiffs constituted joint family with the defendants.
12. Ex.P.1 to P.5 are the record of rights. On perusal of these documents, it is clear that the suit properties are standing in the names of defendants-1, 3, 5 and deceased Lakkavva. On perusal of these documents, it appears that there is partition in respect of suit properties between the defendants. It also appears that they have got their names entered in respect of suit properties in the records as per the

partition dated 29-06-2009. It is also stated that there is no partition between the plaintiffs and defendants in respect of suit properties as per the version of the PW.1 to 4. But, the defendants have contended in their pleading that there was partition between defendants in respect of suit properties. They have also stated that they have compromised before the Lok Adalat by filing compromise petition in O S No.17/2009. They have also stated that they are in actual possession and enjoyment of the suit properties, after compromise. By considering this pleading, it is clear that there is partition between the defendants themselves in respect of suit properties. But, it is clear that there was no partition between the plaintiffs and defendants in respect of suit properties. It also appears from perusal of Ex.P.6 to 9, which are the plaint, compromise petition, compromise decree and final decree that the deceased Basavaraj was not party to that suit and compromise. Therefore, I am of the opinion that there was no partition between the plaintiffs and defendants. Hence, I am of the opinion that the suit properties are still joint family properties of the plaintiffs and defendants. I am also of the opinion that the said compromise in O S No.17/2009 is not binding on the share of the plaintiffs in respect of the suit properties. On perusal of Ex.P.1 to P.5, I am also of the opinion that the suit properties were standing in the name of defendant-1 who is

father of deceased Basavaraj and defendants-2 to 5. After partition as per the compromise, the names of defendants-3 and 5 are entered in respect of suit properties after 2009. Admittedly, the compromise was effected on 7-1-2009. The names of defendants-3 and 5 are entered as per the partition dated 29-6-2009 in respect of suit properties. Therefore, I am of the opinion the said compromise decree is not binding on the share of the plaintiffs since the plaintiffs and deceased Basavaraj were not parties to the compromise in O S No.17/2009.

13. PW.2 to 4 have also supported the case of the PW.1 by stating that the plaintiffs are the wife and son of deceased Basavaraj, and deceased Basavaraj, defendants-2 to 5 are the sons of defendant-1 and deceased Lakkavva, and the plaintiffs have constituted the joint family with the defendants. They have also stated that the plaintiffs were not parties to the compromise in O S No.17/2009 and there was no partition in respect of suit properties between the plaintiffs and defendants. It is also stated by them that the plaintiffs are in joint possession and enjoyment of the suit properties along with the defendants by cultivating the same jointly. Therefore, I am of the opinion that there is no partition in respect of suit properties between the plaintiffs and defendants and therefore, the suit properties are still

joint family properties of plaintiffs and defendants, although the suit properties were partitioned between the defendants as per the compromise decree in O S No.17/2009.

14. The defendants have not chosen to cross-examine PW.1 to 4 to disprove the case of the plaintiffs. On the other hand, the plaintiffs have proved the case on the basis of preponderance of probabilities. The defendants have also not adduced contrary evidence to rebut the evidence of plaintiffs. Therefore, I hold that the plaintiffs are the joint family members and the suit properties are the joint family properties of plaintiffs and defendants. Accordingly, I answer issue No.2 in the affirmative and issue No.3 partly in the affirmative.
15. **Issue No.4:** The defendants have taken contention in the pleading that the suit is not maintainable since the compromise decree entered into between the defendants in O S No.17/2009 before the Lok Adalat. They have also contended that final decree has been drawn in consequence of compromise decree and for this purpose, it is necessary to look into the necessary provision. Section 21 (2) of Legal Service Authority Act, 1987 clearly says that every award made by Lok Adalat shall be final and binding on all the parties to the dispute and no appeal shall lie to any Court against the award. This provision is not bar to the plaintiffs

to file the suit. Because, in O S No.17/2009, neither the plaintiffs nor the deceased Basavaraj were parties to the dispute. Without arraying them, the defendants got compromise. The award passed by Lok Adalat is binding only to the parties to the dispute and not other parties. Therefore, the suit is maintainable. Section 96(3) of Civil Procedure Code also says that no appeal shall lie from a decree passed by the Court with the consent of parties. This provision is also not applicable to the case on hand. Because, the plaintiffs have not given any consent to the defendants to arrive at compromise, and the plaintiffs have not filed appeal against that compromise. Therefore, this provision is also not bar to file the suit. Order 23 Rule 3A of C P C says that suit shall not lie to set aside the decree on the ground a compromise on which the decree is passed was not lawful. This provision is also not applicable to this case. Because, the plaintiffs have not filed the suit on the ground that the compromise decree was not lawful. Moreover, the plaintiffs are not parties to the said compromise decree. Therefore, I am of the opinion that this provision is also not bar to the plaintiffs to file this suit. Therefore, I am of the opinion that the suit is maintainable, although the defendants got compromise decree in O S No.17/2009 before the Lok Adalat. Accordingly, I answer this issue in the affirmative.

16. **Issue No.5:** The plaintiffs have proved the issue Nos.1 to 4 that the suit is very well maintainable and the plaintiffs are related to deceased Basavaraj, who is the son of defendant-1 and brothers of defendants-2 to 5. The plaintiffs have also proved that they have constituted joint Hindu family and the suit properties are the joint family properties and have also proved that there is no partition in the suit properties between them and the defendants. Therefore, they are entitled to the relief sought in the plaint. The plaintiffs have specifically averred that the defendants have entered into the compromise by suppressing true material facts before the Court. On perusal of the Ex.P.6 to P.9, it appears so. Because, either plaintiffs or deceased Basavaraj are not made as parties in O S No.17/2009. The defendants have compromised and got compromise decree as well as final decree in O S No.17/2009 without the knowledge of the plaintiffs. It also appears that they have suppressed the true facts. It also shows that the defendants have got entered their names in respect of suit properties as per Ex.P.1 to P.4. By considering the available materials on the record and due to lack of sufficient evidence on the part of the defendants, I am of the opinion that the compromise decree passed in O S No.17/2009 is not binding on the share of the plaintiffs. And the plaintiffs are entitled to the reliefs. There

is also document to show that the defendants have partitioned the suit properties between themselves without the knowledge of plaintiffs. Therefore, I have already opined that there was no partition between the plaintiffs and defendants and there is partition only between the defendants.

17. Since the plaintiffs have proved the relationship, the suit properties are joint family properties and there is no partition in respect to suit properties, they are entitled to the legitimate share in the suit properties. The plaintiffs have filed written arguments and they have stated that the defendant-1 by name Musheppa died during pendency of the suit, therefore, the share has been increased to the plaintiffs than they have claimed earlier. Accordingly, plaintiffs are entitled to the $\frac{1}{5}$ share in the suit properties. Earlier the plaintiffs were entitled to the $\frac{1}{6}$ share in the suit properties. Accordingly, the defendants-2 to 5 are also entitled to $\frac{1}{5}$ share each in the suit properties. Accordingly, I answer this issue in the affirmative.

18. **Issue No.6:** - As per the above discussion, I pass the following:

Order

The suit of the plaintiffs for partition and separate possession is decreed.

The plaintiffs are entitled to 1/5th share in the suit properties.

The defendants-2 to 5 are entitled to 1/5 share each in the suit properties.

The compromise decree passed in O S No.17/2009 is not binding upon the share of plaintiffs.

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

Draw Preliminary decree accordingly.

(Dictated to the Stenographer, typed by him in the computer, corrected and then pronounced by me in the Open Court on this the 15th September, 2017)

(LOKESHA M.G.)
PRL CIVIL JUDGE AND JMFC
GOKAK

ANNEXURE***I. LIST OF WITNESSES EXAMINED FOR THE PLAINTIFFS***

PW-1 : -Smt. Laxmi Basavaraj Kadakol
PW-2 : -Lakkappa Ramappa Ningannawar
PW-3 : -Doddayallappa Sidaram Antargatti
PW-4 : -Halappa Mutteppa Antargatti

II. LIST OF DOCUMENTS EXHIBITED FOR THE PLAINTIFFS

Ex.P-1 to 5 – Record of Rights of suit properties
Ex.P-6 – Certified copy of order sheet in OS No.17/2009
Ex.P-7 – Certified copy of plaint in OS No.17/2009
Ex.P-8 – Certified copy of compromise petition in OS No.17/2009
Ex.P-9 – Certified copy of decree in O S No.17/2009
Ex.P-10 – Birth certificate
Ex.P-11 – ESI identity card
Ex.P-12 – Ration card
Ex.P-13 – Adhar card
Ex.P-14 – Adhar card
Ex.P-15 – Election identity card
Ex.P-16 – Income certificate
Ex.P-17 – Caste certificate
Ex.P-18 – Residential certificate
Ex.P-19 – Order copy of Child Development Planning Officer
Ex.P-20 – Marriage invitation card
Ex.P-21 & 22 – School achievement records
Ex.P-23 & 24 – Bank passbooks

III. LIST OF WITNESSES EXAMINED FOR THE DEFENDANTS

- NIL -

IV. LIST OF DOCUMENTS EXHIBITED FOR THE DEFENDANTS

- NIL -

**Prl. Civil Judge and JMFC,
Gokak.**