

IN THE COURT OF CIVIL JUDGE AND JMFC, KITTUR.

PRESENT : Smt. Farha Begum Sayed,
BA, LL.B,
Civil Judge & JMFC, Kittur.

Dated on this 17th day of December 2022.

OS. No.44/2022.

1. Smt. Rudravva Sangappa Kajagar,
Age: 68 years, Occ: Household work,
R/o: Hunashikatti, Tq: Kittur,
Dist: Belagavi.
2. Smt. Gangavva Somappa Danannavar,
Age: 47 years, Occ: Household work,
R/o: Hunashikatti, Tq: Kittur,
Dist: Belagavi.
3. Smt. Gangavva Sangappa Kajagar,
Age: 54 years, Occ: Household work,
R/o: Hunashikatti, Tq: Kittur,
Dist: Belagavi.
4. Sri. Kalmesh Sangappa Kajagar,
Age: 32 years, Occ: Govt. Employee,
R/o: Hunashikatti, Tq: Kittur,
Dist: Belagavi.
5. Sri. Iranna Sangappa Kajagar,
Age: 30 years, Occ: Govt. Employee,
R/o: Hunashikatti, Tq: Kittur,
Dist: Belagavi.
6. Sri. Basavaraj Sangappa Kajagar,
Age: 28 years, Occ: Govt. Employee,
R/o: Hunashikatti, Tq: Kittur,
Dist: Belagavi.

.....Plaintiffs.

(By Sri. R. G. Hiremath, Advocate)



V/s.

1. The Chief Secretary,
Revenue Department, Vikas Soudha,
Bengaluru.
2. The Deputy Commissioner,
Belagavi, Tq & Dist: Belagavi.
3. The Tahasildar,
Balhongal, Dist: Belagavi.
4. The Tahasildar,
Kittur, Dist: Belagavi.

.....Defendants.

(D-1 to 4 By AGP)

Date of institution of suit : 30.03.2022.
Nature of the suit : Declaration of legal heirs.
Evidence commenced on : 18.11.2022.
Evidence closed on : 16.12.2022.
Judgment pronounced on : 17.12.2022.
Total Duration : Year Months Days
00 08 18

-:: JUDGMENT ::-

The plaintiffs have filed the present suit seeking the relief of declaration, declaring that they are the legal heirs of deceased **Sangappa Basavanneppa Kajagar.**



2. The brief facts of the plaintiffs case is that:-

The plaintiffs have pleaded that, the plaintiffs No.1 & 3 are the wives and the plaintiffs No.2, 4 to 6 are the children of deceased Sangappa Basavanneppa Kajagar, who has died on 06.06.2021 at Hunashikatti village. Out of the wedlock of the plaintiff No.1 & deceased Sangappa, the plaintiff No.2 has born and out of the wedlock of the plaintiff No.3 & deceased Sangappa, the plaintiffs No.4 to 6 were born.

Apart from the plaintiffs there is no any legal heirs to the deceased Sangappa Basavanneppa Kajagar. The deceased Sangappa Basavanneppa Kajagar during his lifetime was owner in possession of landed & house properties at Hunashikatti village. That the Sangappa Basavanneppa Kajagar had died intestate leaving behind the plaintiffs as his legal heirs and after his demise, the plaintiffs are in possession & enjoyment of the properties left behind the deceased. That the plaintiffs have approached the defendant No.3 seeking survivorship certificate, but the defendant No.3 issued an endorsement stating to approach competent authority for the remedy. Hence, the plaintiffs are constrained to file this suit.

3. In pursuance of suit summons, the defendant No.1 to 4 have appeared before Court through learned AGP. The defendant No.4 has filed his elaborated written



statement and the defendant No.1 to 3 have adopted the written statement filed by the defendant No.4.

The defendants have denied all the averments made in the plaint & contended that, suit of the plaintiffs is not maintainable in the eye of law. The plaintiffs by suppressing the material facts, have created the genealogy as per their wish. The defendants are not aware about the details of the family of deceased Sangappa Basavanneppa Kajagar. That the plaintiffs have filed this false suit, in-order to dupe the properties of deceased Sangappa. That there is no cause of action to the plaintiffs to file this suit. That the suit of the plaintiffs is barred by law of limitation. That the plaintiffs have not produced sufficient materials in support of their case.

Hence, prayed to dismiss the suit with cost.

4. Based on the above pleadings, the following issues have been framed:-

ISSUES

1. Whether the plaintiffs prove that, they are the Class-I heirs of deceased Sangappa Basavanneppa Kajagar?
2. Whether defendant No.4 proves that, the suit of the plaintiffs is barred by law of limitation?



3. Whether the plaintiffs are entitled to the reliefs as sought for?
4. What order or decree?
5. In order to prove the case of plaintiffs, plaintiff No.1 herself examined as PW-1 and produced 15 documents marked at Ex.P.1 to 15. On the other hand, the learned AGP submits that there is no defendants evidence. Hence, the evidence of defendants is taken as nil.
6. Heard the arguments of learned counsel for plaintiffs and learned AGP. Perused the pleadings, evidence and materials available on record.
7. Based on the available materials and pleadings my answers to the above issues are as here under:-

Issue No.1 : Partly in the affirmative.
Issue No.2 : In the negative.
Issue No.3 : Partly in the affirmative.
Issue No.4 : As per final order for the following;

-::REASONS::-

8. **Issue No.1 & 3:-** Since these issues are interlinked with each other in order to avoid repetition of facts, findings and evidence, they are taken up together for common discussion. The plaintiffs have filed this suit



seeking declaration that, they are the legal heirs of deceased Sangappa Basavanneppa Kajagar.

9. The plaintiff No.1 has got herself examined as PW-1 and has reiterated the contents of the plaint in her examination in chief affidavit. The plaintiffs have produced 15 documents. Wherein Ex.P.10 is the death extract of Sangappa Basavanneppa Kajagar. Further, the plaintiffs have produced Ex.P.13 which is an application filed by the plaintiff No.1 before the Tahasildar Kittur seeking Varasa certificate, in the application it is mentioned that deceased Sangappa Basavanneppa Kajagar had two wives, they are plaintiffs No.1 & 3 in the present suit. But plaintiffs have not filed any document more specifically the genealogical tree to show their relationship. However, just because there are no sufficient documentary evidence to prove the relationship of deceased with the plaintiffs, this Court cannot disbelieve the case of the plaintiffs as Indian Evidence Act recognizes oral evidence also. Further, in Ex.P.1 it is perused that the plaintiff No.1 had filed the application before Tahasildar Kittur to issue 'Varasa certificate' of his father Sangappa Basavanneppa Kajagar. But, The Tahasildar Kittur has issued an endorsement at Ex.P.1 that since the said Sangappa Basavanneppa Kajagar had two wives, the said office cannot issue 'Varasa Certificate' as sought in the said application.



10. I have perused the materials available on record. It is the undisputed fact that the plaintiff No.1 is the first wife of deceased Sangappa Basavanneppa Kajagar and plaintiff No.2 is the daughter born to the plaintiff No.1 & deceased Sangappa Basavanneppa Kajagar. Further, plaintiff No.3 is the second wife of deceased Sangappa Basavanneppa Kajagar and plaintiffs No.4 to 6 are the children born to plaintiff No.3 & deceased Sangappa Basavanneppa Kajagar. As per Hindu Marriage Act, there is no concept of second marriage and any such marriages during the subsistence of first marriage and first wife are void and are not recognized in Hindu Law. Section 11 of the Hindu Marriage Act, 1955, stipulates that any marriage solemnized after the commencement of the Act shall be null and void if the same contravenes any one of the conditions specified in clauses (i), (iv) and (v) of Section 5 of the Act. Section 5 (i) of the Act stipulates that the marriage cannot be legally solemnized when either party has a spouse living at the time of such marriage. Therefore, any marriage by a Hindu male after the commencement of the Hindu Marriage Act, 1955 during the lifetime of his first wife will be a nullity and has no legal effect. Such marriage cannot be valid on the ground of any custom. In fact, a custom opposed to an expressed provision of law is of no legal effect. Hence, the plaintiff No.3 is not a legally wedded wife of deceased Sangappa Basavanneppa Kajagar. Therefore, plaintiff No.3 is not a legal heir to the



deceased Sangappa Basavanneppa Kajagar. But, as per Sec.16 of Hindu Marriage Act, the children born out of void marriage, though termed as illegitimate but they are still the legal heirs of deceased father. Hence, in view of the same, plaintiff No.1, 2 and 4 to 6 are the only Class-I legal heirs of deceased Sangappa Basavanneppa Kajagar. The list of Class-I legal heirs of Hindu Succession Act, is taken for reference as below;

Class-I

Son; daughter; widow; mother; son of a predeceased son; daughter of a predeceased son; son of a predeceased daughter; daughter of a predeceased daughter; widow of a predeceased son; son of a predeceased son of a predeceased son; daughter of a predeceased son of a predeceased son; widow of a predeceased son of a predeceased son.

- 11.** The above schedule shows that widow is the class-I heir but, the schedule does not contains second wife or widows. Hence, the plaintiff No.1 being legally wedded wife and widow and plaintiffs No.2 and 4 to 6 being the children of deceased Sangappa Basavanneppa Kajagar are only finds their place in the schedule of Class-I legal heirs. Hence, **Issue No.1 is answered partly in the affirmative.**



12. Issue No.2:- Though the learned AGP has taken the contention that, the suit is barred by law limitation but, neither evidence has been adduced nor have argued on this point. However, this Court is conscious that, Sec.3 of the Limitation Act imposes an obligation on the Court to look into the issue of limitation irrespective of the fact that it has been taken as a defence or not. Upon perusal of the Ex.P.1 endorsement issued by the defendant No.4 date:23.07.2021, wherein this act of the defendant No.4 constitutes the cause of action and this suit is filed on 30.03.2022. It appears that, this contention is casually & mechanically taken by the learned AGP. Hence, this Court can safely conclude that, this suit is not barred by law of limitation. As such, **Issue No.2 is answered in the negative.**

13. Issue No.3:- Since, the plaintiffs have duly proved the relationship with deceased Sangappa Basavanneppa Kajagar as discussed in issue No.1. Therefore, only the plaintiffs No.1, 2 and 4 to 6 are entitled for the relief as sought, as a result **issue No.3 is answered partly in the affirmative.**

14. Issue No.4:- In view of above said discussions & reasonings, I proceed to pass the following;

ORDER

Suit of the plaintiffs is hereby partly allowed.



It is hereby declared that, plaintiffs No.1, 2 and 4 to 6 are the only Class-I legal heirs of deceased Sangappa Basavanneppa Kajagar.

Declaration of plaintiff No.3 as Class-I legal heir of deceased Sangappa Basavanneppa Kajagar is hereby rejected.

Interlocutory applications if any, shall stand disposed off accordingly.

Looking into the nature of the suit, there is no order as to costs.

Draw decree accordingly.

(Dictated to the stenographer on online computer, corrected, signed and pronounced by me in the open court on this day of 17th December 2022)

(Smt. Farha Begum Sayed)
**Civil Judge and JMFC,
Kittur.**

:: ANNEXURE ::

LIST OF WITNESSES EXAMINED FOR THE PLAINTIFF/S :

PW-1 : Smt. Rudravva S. Kajagar.

LIST OF DOCUMENTS MARKED FOR THE PLAINTIFF/S :

Ex.P-1 : Endorsement issued by defendant No.4.



Ex.P-2 : Office copy of legal notice.
Ex.P-3 - 6 : Postal receipts.
Ex.P-7 - 9 : Postal acknowledgments.
Ex.P-10 : Copy of death certificate.
Ex.P-11 : Copy of aadhar card of plaintiff No.1.
Ex.P-12 : Notarized copy of ration card.
Ex.P-13 : Application dated:06.07.2021.
Ex.P-14,15 : Paper publications.

LIST OF WITNESSES EXAMINED FOR THE DEFENDANT/S :

---Nil---

LIST OF DOCUMENTS MARKED FOR THE DEFENDANT/S :

---Nil---

(Smt. Farha Begum Sayed)
**Civil Judge and JMFC,
Kittur.**