

KABK210012532020



**IN THE COURT OF ADDL. CIVIL JUDGE & J.M.F.C, MUDHOL,
AT: MUDHOL.**

PRESENT:

SMT. SARASWATI HOTAKAR,
B.A., LL.M.,
Addl. Civil Judge & JMFC., Mudhol.

Dated this the 22nd Day of March - 2024

O.S.No.132/2020

Plaintiff/s:

Smt.Muttawwa W/o. Muttappa Bashetti,
Age: 39 years, Occ: House wife and Agriculture,
R/o. Ingalagi, Tq: Mudhol, Dist: Bagalkote.

-V/s-

Defendant/s:

1. Basavaraj @ Basuraj S/o. Shivappa Teli,
Age: 35 years, Occ: Agriculture,
R/o. Ingalagi, Tq: Mudhol, Dist: Bagalkote.
2. Smt.Kasturewwa W/o. Sadashiv @ Sadappa Jeeragi,
Age: 41 years, Occ: House wife and Agriculture,
R/o. Kumbarhalla, Tq: Jamakhandi, Dist: Bagalkote.

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Plaintiff/s by Sri SCU, Advocate

Defendant/s by Sri SBJ, Advocate

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ORDER ON PRELIMINARY ISSUE
(ADDITIONAL ISSUE Nos.1& 2)

The plaintiff has filed this suit seeking partition and separate possession of her 1/3rd share in respect of suit schedule 'B' properties by metes and bounds by holding that M.R.No.205 is illegal and not binding upon the share of plaintiff in the interest of justice and equity.

The plaintiff has described the suit properties in schedule 'B' as under;

Suit landed properties:

SI.No.	R.S.No.	Measuring A - G	Assd. At Rs. - Ps.	Situated at
1	97/4	4 - 01	10 = 94	Ingalagi, Tq: Mudhol
2	194/1	2 - 33	3 = 99	Alagundi BK, Tq: Mudhol

Suit house and open space properties:

SI.No.	VPC No.	Situated at
1	68	Alagundi BK, Tq: Mudhol
2	267	Alagundi BK, Tq: Mudhol
3	61	Ingalagi, Tq: Mudhol

2. In the plaint averments the plaintiff has contended that, she is own sister of defendant Nos.1 and 2. The parents of the parties are demised long back leaving behind the present plaintiff and defendant Nos.1 and 2 as per genealogy described in schedule 'A' of the plaint. The plaintiff and defendants are the members of Joint Hindu Family and they are having suit schedule 'B' properties as stated above. It is further contended that, suit schedule 'B' properties are their joint family ancestral properties and the plaintiff

and defendants are in joint possession and enjoyment of the suit schedule 'B' properties. The suit item No.1 R.S.No.97/4 measuring 4 acres 1 gunta succeeded by plaintiff and defendants as per MR No.H26/2018-19 and suit item No.2 R.S.No.194/1 measuring 2 acres 33 guntas is standing in the name of defendant No.1 as per MR No.205. It is further contended that the said MR No.205 was certified without knowledge and behind back of plaintiff and same is not binding on her and defendant No.2 since they are not parties to the partition. It is further contended that, the suit house properties i.e., VPC No.68 and 61 are standing in the name of defendant No.1 and another house VPC No.267 is standing in the name of their deceased mother i.e., Smt. Mahadevi. Now the defendant No.1 taking undue advantage of his name appearing in the property extracts is trying to alienate the same without knowledge and consent of the plaintiff. Even though the said landed properties and house properties are standing in the name of defendant No.1, the plaintiff is in joint possession and enjoyment of the said properties along with defendants.

Further it is contended that, till now there is no partition in respect of landed and house properties. Very recently the plaintiff came to know that, the defendant No.1 by taking undue advantage of his name appearing in the records, causing adverse to the interest of plaintiff and illegally creating documents and intending to sell the properties. Thereafter the plaintiff along with elders

requested the defendant No.1 to effect partition and to allot her legitimate share in the suit properties but the defendant No.1 not heeded their request and refused for the same. The cause of action arose to file this suit on 17.08.2020 when the defendant No.1 started to assert his hostile title over the suit properties and refused to effect partition in the suit properties. On these grounds prays to decree the suit.

3. The opponents/defendants have filed written statement and denied all the averments of the plaint. In the written statement the defendants have admitted that, the plaintiff is their own sister and their parents demised long back. It is further contended that, the propositus Shivappa Irappa Teli died on 17.04.1994 at Alagundi BK village leaving behind his wife Smt.Mahadevi W/o. Shivappa Teli. The plaintiff and defendants are their legal heirs. The suit land R.S.No.194/1 is self acquired property of propositus Shivappa. After his demise, the name of their mother Mahadevi and plaintiff and defendants have been entered in respect of landed properties as per ME No.2545. It is further contended that, the plaintiff and defendant No.2 given marriage about 20-22 years back and they are living in their respective husbands houses. At the time of their marriage, the defendant No.1 spent huge amount and given gold ornaments towards their share and as such the plaintiff and defendant No.2 have no share in the suit properties. It is further contended that, suit item No.2 R.S.No.194/1 is self acquired property of propositus Shivappa and after his demise, with consent

of plaintiff and defendant No.2, the name of defendant No.1 and their mother Smt.Mahadevi came to be entered in the said land and after partition the land R.S.No.194/1 is allotted in the name of defendant No.1 and R.S.No.97/3B (97/4) is allotted to the share of Smt.Mahadevi and accordingly MR No.205/2006-07 certified on 31.10.2006 and since from the said date the defendant No.1 alone is owner and in possession of the said land.

4. It is further contended that, the suit item No.2 R.S.No.97/3B renumbered as R.S.No.97/4 property purchase by the maternal grandfather of plaintiff and defendants i.e., Dodabasappa S/o. Sangappa Bashetti under registered sale deed on 20.07.1974. The said Dodabasappa having three daughters i.e., Nimbewwa, Mahadevi and Saraswati and out of love and affection he has given up his ownership right over suit land R.S.No.97/4 and panchayat properties in the name of his daughter Smt.Mahadevi and accordingly her name mutated in the said properties. After demise of propositus Shivappa, the defendant No.1 only cultivating and enjoying the suit properties. Subsequently during the lifetime of Smt.Mahadevi, the plaintiff and defendant No.2 started claiming share in the properties held by their mother and thereafter partition effected in suit land R.S.No.97/3B i.e., renumbered R.S.No.97/4 allotted to the share of defendant No.1 and plaintiff, defendant No.2 and their mother Smt.Mahadevi each have taken Rs.50,000/- towards their share. Hence the defendant No.1 is owner in possession of suit R.S.No.97/4 from the date of partition dated

27.07.2006. But the defendant No.1 inadvertently has not mutated his name in the said land and it was remained in the name of their mother Smt.Mahadevi who died on 14.05.2017. Thereafter, the plaintiff and defendants got entered their names in the said land by way of warasa and at the time of effecting warasa the plaintiff and defendant No.2 agreed that they will give up their rights over the suit R.S.No.97/4 since they have taken Rs.50,000/- towards their share. It is further contended that, thereafter defendant No.1 requested them to relinquish their right but the plaintiff and defendant No.2 acting adverse to the interest of defendant No.2 and claiming share in the suit properties. The plaintiff and defendants No.2 are not at all in possession of the suit properties and they have not challenged the mutation entries before any authorities. The plaintiff and defendant No.2 have no right over the suit properties since their rights extinguished long back and they have not valued the suit property properly and not paid proper court fee. Accordingly this court has no pecuniary jurisdiction to try this suit. On these grounds prays to dismiss the suit with costs.

5. On the above pleadings this court has framed as many as 7 issues on 18/06/2022 and framed two additional issues (which has been treated as preliminary issues) on 10/10/2022, the following are the additional issues...

ADDITIONAL ISSUES Dtd: 10.10.2022

1. Whether the defendant proves that, this court has no pecuniary jurisdiction to entertain and decide this suit?
 2. Whether the defendants proves that the plaintiff is not the properly valued the suit property and not paid court fee?
- 6.** Heard the arguments of both sides.
- 7.** On careful perusal of records, my findings to the above preliminary issue is as under;
- Addl. Issue No.1: In the Negative,
Addl. Issue No.2: In the Negative,

: R E A S O N S :

8. Additional Issue Nos. 1 & 2: These issues are take up together in order to avoid repetition of facts.

9. The plaintiff has filed present suit for partition and separate possession of suit schedule "B" properties. Further contended that herself and defendants are the brother and sisters and their parents died long back leaving behind the present plaintiff and defendants as only legal heirs and suit schedule properties. Suit schedule properties are the joint family ancestral properties of the plaintiff and defendants and they are in actual possession and enjoyment of suit schedule properties. Accordingly plaintiff prayed to allot 1/3 share in the suit schedule properties. On the other hand

defendant No 1 filed detailed written statement wherein he has admitted the relationship but denied that suit schedule properties are joint family ancestral properties of plaintiff and defendants and contended that plaintiff is not in actual possession of the suit schedule property and plaintiff has wrongly valued the suit property and not paid proper court fee. Further contended that since the plaintiff is not in joint possession of the suit properties she has to pay the court fee on the market value of the suit properties which exceeds the pecuniary jurisdiction of this court.

10. In support of his contention defendant No 1 Basavaraj Shivappa Teli examined in chief as DW.1 and got marked Ex.D.1 to D.4 documents. Ex.D.1 is the valuation report of Ingalagi village (N.A Land), Ex.D.2 is the valuation report of Alagundi village (N.A Land), Ex.D.3 is the valuation report of Alagundi BK village (Agricultural Land), Ex.D.4 is the valuation report of Ingalagi village (Agricultural Land). On the other side plaintiff has not examined any witness in support of her contention.

11. The contention of the defendant is that plaintiff has not valued the suit properly and proper court fee is not paid on the plaint, because plaintiff is not at all in joint possession of the suit properties, as such plaintiff is required to pay the court fee on the market value of the suit properties as per the provisions of K.C.F and S.V Act, 1958. As per this contention of defendant plaintiff ought have paid the court fee under section 35(1) of K.C.F and SV

Act on the existing market value of the suit property. For considering the issue involved in this case, advertence has to be made to the valuation report filed by the defendants which reveals that plaintiffs have valued the suit under section 35(2) R/w section 7(2)(d) of KCF and SV Act 1954, for the relief of partition and arrived at at valuation of Rs. 200/- i.e. 12 ½ times of assessment of suit lands.

12. The defendant in his chief examination reiterated the contentions raised in his written statement and in cross examination he admitted that the names of plaintiff and defendants jointly appearing in RTC's of suit schedule property bearing R.S.No 94/4 and admitted that plaintiff is having 1/3 share in the said land but denied that plaintiff has filed present suit only with respect to her 1/3 share and also denied that she has valued the suit property only in respect of her share and also admitted that he has not produced any documents to show that 1/3 share of plaintiff will not come within the pecuniary jurisdiction of this court and also admitted that he has not produced any calculation memo as to his contentions.

13. As per the plaint averments plaintiff has contended that suit schedule properties are the joint family ancestral properties of the plaintiff and defendants and she is in actual possession and enjoyment of the suit schedule properties. On perusal of plaint Para No 8 plaintiff has valued the suit properly. Moreover, plaintiff has

paid court fee only in respect of her 1/3 share in the suit schedule properties which comes within the pecuniary jurisdiction of this court. Moreover, in suits for partition and separate possession while determining the court fee, the court should look to is the averments in the plaint and not the written statement or the evidence. Mere averment in the plaint that the plaintiff and defendants are in joint possession is sufficient, not withstanding the fact they are living separately even at two different places because in law it make no difference. In the case of a property belonging to a coparcener, joint family or co-ownership, possession of one coparcener or a member of the joint family or a co-owner is the possession of all. To hold that the plaintiff is in joint possession on the date of the suit, it is not necessary that the plaintiff should be in actual physical possession of the whole or part of the property which is the subject matter of the suit. Therefore, the contention that plaintiff is not in joint possession of the property and she ought to paid court fee under section 35(1) of KCF and SV Act does not sustain and the valuation made by plaintiff under section 35(2)R/w section 7(2) (b) of KCF and SV Act is proper one and this court has pecuniary jurisdiction to try the suit. Accordingly, I answer additional issue Nos. 1 & 2 in the Negative. Accordingly I proceed to following order.....

ORDER

The suit is properly valued and court fee paid is sufficient. Accordingly this court has pecuniary jurisdiction to try the suit.

(Dictated to the stenographer directly on to the computer typed by him, transcript revised, corrected and then pronounced by me in the open court this the day of 22nd day of March 2024)

(Smt.Saraswati Hotakar)
Addl. Civil Judge & JMFC., Mudhol.

