

THE COURT OF THE PRL. SENIOR CIVIL JUDGE ,
JAMKHANDI.

PRESENT:

Sri.Balachandra.N.Bhat

B.Sc, LLB, PGDHRL,

Prl. Senior Civil Judge & JMFC,

Jamkhandi.

O.S No.105/2019

DATED THIS THE 22nd DAY OF April-2021

Plaintiffs.

1. **Smt.Komaxi @ Nirmala W/o Siddappa Shapeti,**
Age:48 years Occ: House hold work.
R/o : Swatantra Yodara Colony, Vijayapura.

(By Sri.PPN Advocate)

Defendants.

1. **Smt.Suvarna W/o Bahuraj Chikkon,**
Age: 55 years Occ: Household work,
R/o Farm House, Opposite Katate plot,
Kadkol Road, Jamkhandi and Dist:Bagalkot.
2. **Kumari.Bhagya D/o Bahuraj Chikkon,**
Age: 19 years Occ: Student,
R/o Farm House, Opposite Katate plot,
Kadkol Road, Jamkhandi and Dist:Bagalkot.
3. **Smt.Sangamesh S/o Bahuraj Chikkon,**
Age: 17 years Occ: Student,
Minor represented by his natural mother
Smt.Suvarna W/o Bahuraj Chikkon,
R/o Farm House, Opposite Katate plot,
Kadkol Road, Jamkhandi and Dist:Bagalkot.
4. **Smt.Renuka W/o Maning Chikkon,**
Age: 52 years Occ: Household work,
R/o : Near Anikindi House, Mudhol Road,
Jamkhandi.

5. **Smt.Sujata W/o Ravi Kollur,**
Age: 23 years Occ: Household work,
R/o Near Anikindi house, Mudhol road, Jamkhandi.
6. **Smt.Geeta W/o Ravi Hosamani @ Magdum,**
Age: 21 years Occ: Household work,
R/o : Farm house, Parthanalli, Tq: Athani,
Dist : Belagavi.
7. **Kumar.Sanganbasappa S/o Maning chikkon,**
Age: 17 years Occ: Student,
8. **Kumar.Basu S/o Maning chikkon,**
Age: 17 years Occ: Student,
Minor represented by their natural mother
Smt.Renuka W/o Maning Chikkon
R/o : Near Anikindi house, Mudhol road,
Jamkhandi.
9. **Shri.Sidray S/o Gurappa Sanasidda,**
Age: 75 years Occ: Agriculture,
R/o : Todalabagi, Tq: Jamkhandi, Dist:Bagalkot.
10. **Smt.Suvarna W/o Ramappa Teli,**
Age: 40 years Occ: Household work,
R/o : Gulgankopa, Tq:Gokak, Dist:Belgavi,
11. **Smt.Laxmavva @ Sujata W/o Mahadev Arakeri,**
Age: 78 years Occ: Household work,
R/o : H.No.110, Visheshrayya Nagar, Asram road,
Near Ladies Hotel, Vijayapura.
12. **Shri.Gurabasappa S/o Basappa Sakreppagol,**
Age: 69 years Occ: Agriculture,
R/o : Hokkalabavi, Jamkhandi, Dist : Bagalkot.
13. **Shri.Praveen S/o Gurabasappa Sakreppagol,**
Age: 17 years, Minor represented by his natural
father Shri.Gurubasappa S/o Basappa Sakareppagol
R/o : Hokkalabavi, Jamkhandi, Dist : Bagalkot.
14. **Shri.Siddappa S/o Basappa Shapeti,**
Age: 75 years Occ: Retired,

R/o : Swatantra Yodha Colony, Vijayapura.

15. **Smt.Smita W/o Sangappa Tuppad,**
Age: 35 years Occ: Household work,
R/o : Desai Wada, Jamkhandi, Dist:Bagalkot.
16. **Smt.Swetha W/o Jagadish Desai,**
Age: 33 years Occ: Household work,
R/o : Swatantra Yodara Colony, Vijayapura.
17. **Sri.Suraj S/o Siddappa Shapeti,**
Age: 30 years Occ: Student,
R/o: Swatantra Yodara Colony, Vijayapura.

(Defendant-1,3,4,7,8-by Sri.GDT Adv)
(D-2, 5, 6 & 9 to 17 Expt.)

Date of Institution	21.08.2019		
Nature of the Suit	Partition and Separate Possession		
Date of Commencement of recording of Evidence	09.12.2019		
Date of Pronouncement of Judgment	22.04.2021		
Duration	YY 01	MM 08	DD 01

//J U D G M E N T//

1. The suit is filed by one of the daughters of the common male ancestor, Sri.Sanganabasappa against the other members of the family for partition and separate possession of her 1/7th share in the suit schedule properties by metes and bounds, costs and

such other relief.

2. The properties are as described herein below to be hereinafter referred to as the suit schedule properties;

SCHEDULE A

LANDED PROPERTY

Herein the descriptions of landed property is as fallows,

SL NO	R S No	AREA A - Gts	ASSEM T	VILLAGE	VALUATION
01	455/1	5A - 00 Gts along with farm house	12 - 05	Jamkhandi	Rs.70,00,000/-

Total valuation comes to Rs 70,00,000/-

The plaintiff`s 1/7th share comes to Rs.10,00,000/-

SCHEDULE B HOUSE PROPERTY

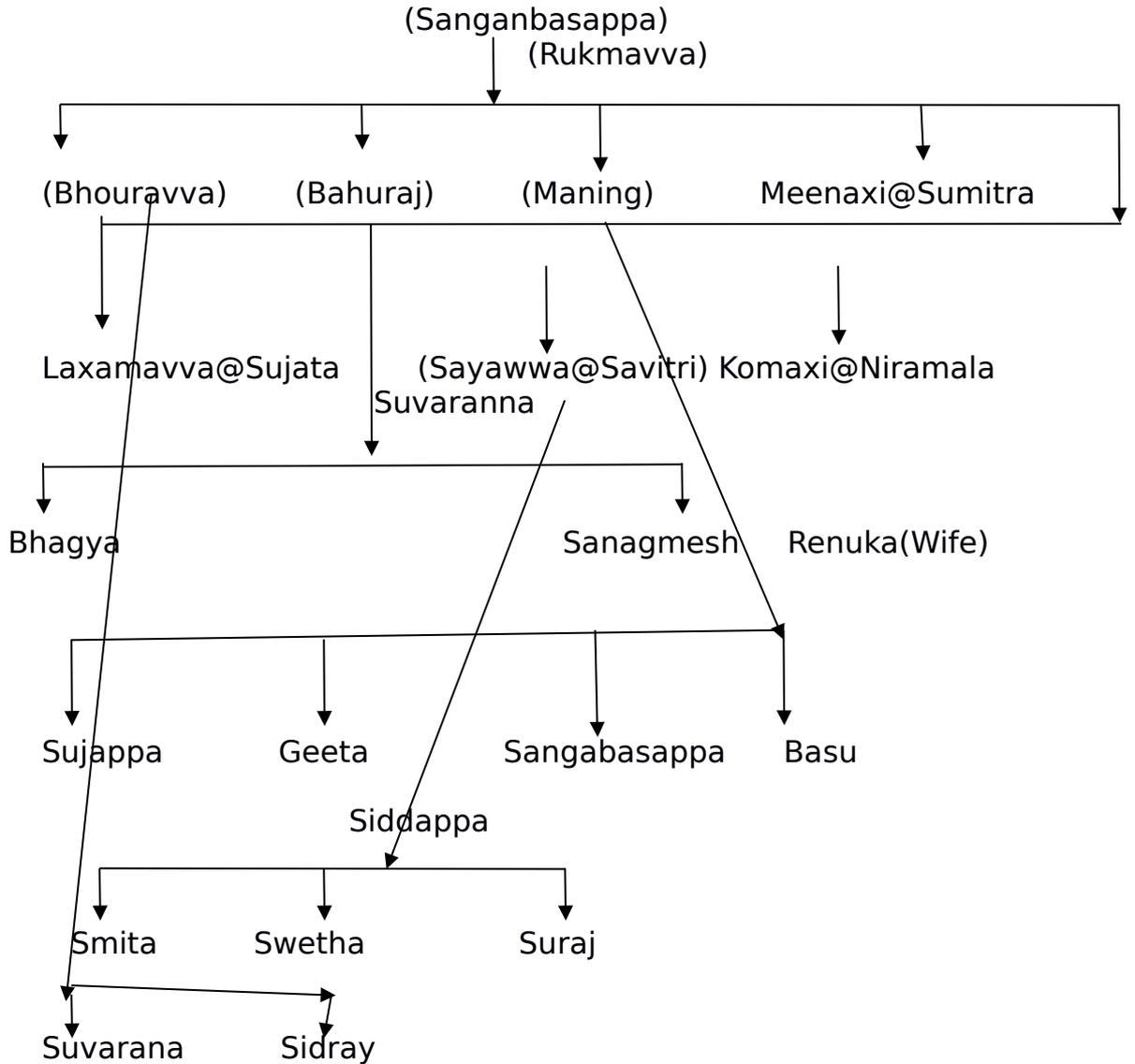
Herein the descriptions of House property is as fallows,

SL NO	C T S No	AREA Sq - Mts	LOCATION	VALUATION
01	3492	140 - 47 1/7 th share in 1/2 share eastern side	Jamkhandi	Rs 7,00,000/-

Total valuation comes to Rs 7,00,000/-

The plaintiffs 1/7th share comes to Rs 1,00,000/-

3. The pedigree of the family of the plaintiffs is as described herein below;



4. The crux of the case of the plaintiff is that the common male ancestor, Sri.Sanganabasappa had died on 26.09.1986. his wife, Smt.Rukmavva had died on 14.10.2015. one of the sons of Sri.Sanganabasappa, Sri.Bahuraj had died on 25.10.2015 and another son of

Sri.Sanganabasappa had died on 9.10.2010. Smt. Sayavva @ Savithri had died on 2.12.1990. Smt.Meenaxi @ sumithra had died on 28.12.2016.

5. Originally the land in Sy.No.455 measuring 10.00 acres was purchased by Sri.Sanganabasappa during 1963 from the joint family nucleus. There was a partition effected in the family amongst the father of Sri.Sanganabasappa and his sons including Sri.Sanganabasappa during 1968. 5-00 acres in Sy.No.455/1 and 1/2 share in the house property in CTS.No.3492 were allotted to the share of Sri.Sanganabasappa. After the death of Sri.Sanganabasappa and his wife his sons Sri.Bahuraj and Maning are alleged to have got their names entered in the revenue records behind the back of the plaintiff without notice to her. The plaintiff claims to have constantly demanded to effect a partition in the family as soon as she had come to know of the acts of Sri.Bahuraj and Sri.Maning. However the demand was

not met but was being postponed. However during august, 2019 when the plaintiff was able to obtain record of rights she had come to know of the acts of the defendant nos.1 to 8 in getting their names entered in the revenue records without her knowledge. The plaintiff was compelled to demand a partition and even through elders. The cause of action had then arisen when the defendants had refused to effect a partition and allot the plaintiff her share. Hence the plaintiff had instituted the present suit for partition.

6. The crux of the defence put forth by the defendant nos.1, 3, 4, 7 and 8 in their written statement filed on 12.01.2021 could be summarised as follows;

7. It is admitted by these defendants that the suit schedule properties are the ancestral joint family properties. According to these defendants there is a custom in the Hindu community in which the daughters are given their share at the time of their marriages in

their parents' house. The shares are usually in the form of golden ornaments, silver ornaments, cash and household articles. After the death of Sri.Sanganabasappa during 1986 there was an oral partition in the family. The plaintiff and her sisters were allotted their respective shares in the form of 25 tolas of gold and Rs.50,000-00 cash in the presence of elders. The partition was acted upon and the plaintiff and her sisters are said to have relinquished their shares in the suit schedule properties. Therefore the sons of Sri.Sanganabasappa, Sri.Bahuraj and Sri.Maning had become absolute owners of the suit schedule properties. There was no joint family in existence and hence the question of the plaintiff demanding a partition would not arise. Sri.Sanganabasappa had died during 1986 and her brothers had died during 2010 and 2015 and therefore the suit filed now is clearly barred by the law of limitation. The suit is without any merits. The suit is alleged to be undervalued and the court fee paid is

insufficient. Accordingly the defendants have sought for an order to dismiss the suit with compensatory costs.

8. On the basis of the pleadings of the parties and the documents produced by them issues were framed on 18.01.2021.

//ISSUES//

- 1) *Whether plaintiffs proves that, she is member of an undivided Hindu joint family and the suit schedule properties are ancestral joint family properties?*
- 2) *Whether the defendants-1,3,4,7 and 8 prove there was partition effected on the death of Sanganabsappa amongst the brothers and sisters and the plaintiff and other sisters were allotted 25 gram gold and Rs.50,000/- each in lieu of their share?*
- 3) *Whether the suit is barred by law of limitation?*
- 4) *Whether the plaintiff is entitled to a share in the suit schedule properties?*
- 5) *What order or decree?*

- 9.** The plaintiff has got herself examined as PW 1 by way of affidavit and has also got marked 7 documents as Ex P 1 to 7.
- 10.** The defendants on the other hand had failed to lead any evidence even after sufficient opportunities being given.
- 11.** Heard and on scanning of the materials on record I have answered the issues in the following;
- 12.** My answer to the above issues are as follows;
Issue 1 : In the Affirmative
Issue 2 : In the Affirmative
Issue 3 : In the Affirmative
Issue 4 : In the Affirmative
issue 5 : As per final order, for the following:

// REASONS //

- 13. Issues.2 & 3 :-** These issues are taken up together as the answer to other issues are dependent on the answers to these issues. The plaintiff contends that the suit schedule property was purchased by Sri.Sanganabasappa. There is no dispute in so far as the pedigree of the family of the plaintiff is concerned.

The defendants also have unequivocally admitted that the suit schedule properties are the ancestral joint family properties. Hence the onus of proving the issue nos.2 and 3 would now be on the defendants. The plaintiff has reiterated this aspect even during the oral evidence by way of affidavit. Apart from the oral testimony of the plaintiff there are documents. Ex.P-1 is the mutation order in M.E.No.6366. This document would show that the land in Sy.No.455 was purchased by Sri.Sanganabasappa and revenue records were changed accordingly to his name. Ex P-2 is the mutation accepted in M.E.No.9802. On the basis of partition effected amongst Sri.Gurappa, Shivalingappa, Sanganabasappa, Srishailappa and Shettappa. The land in Sy.no.455/1 was allotted to the share of Sri.Sanganabasappa. Ex P 3 is the mutation order made on the death of Sri.Sanganabasappa. The sons and daughters of Sri.Sanganabasappa had together inherited and succeeded to the property. Ex P 4 and 5 also would

reveal that the entries in the revenue records were changed on the death of Sri.Bahuraj and Sri.Maninga. Ex P.6 and 7 are the RTC extract and the CTS property extract. Now there are no documents to show that there was partition or that the plaintiff and her sisters were given Rs.55,000-00 and 25 gms of gold. There is absolutely no piece of document to show that the plaintiff and her sisters had relinquished their right through a registered instrument. The materials available only would show that the revenue records in respect of the properties were changed on the death of Sri.Sanganabasappa and his two sons. There was no partition at all amongst the descendants of Sri.Sanganabasappa. There was only a partition amongst the brothers of Sri.Sanganabasappa. Under such circumstances the defendants have utterly failed to prove the defence that the plaintiff was given Rs.50,000-00 and 25 gms of gold. Hence I have no other option but to answer the issue nos.2 and 3.

14. On the contrary in view of the admission of the defendants that the suit schedule properties are the ancestral joint family properties in view of the dictum of the hon'ble apex court in the case of vineeth sharma the plaintiff being a daughter one amongst the seven children is entitled to 1/ 7th share in the suit schedule properties. Accordingly I have answered the issue no.1 & 4 in the affirmative.

15. in view of my answers to the issue nos.1 to 4, I proceed to pass the following;

ORDER

The suit of the plaintiff is decreed with costs.

The plaintiff is held entitled to 1/ 7th share in the suit schedule properties by metes and bounds.

The plaintiff is also entitled to the costs of the proceeding.

Office to draw preliminary decree accordingly.

(The judgment is typed by the proceeding officer corrected and formatted by Typist revised by the proceeding officer pronounced in open court on this the 22nd day of April--2021)

**(Balachandra.N.Bhat)
Prl. Senior Civil Judge
Jamkhandi.**

ANNEXURES**LIST OF WITNESSES EXAMINED ON BEHALF OF THE Plaintiffs:-**

Pw-1 : Komaxi @ Nirmala W/o Siddappa Shapeti

LIST OF DOCUMENTS MARKED ON BEHALF OF THE Plaintiffs:-

Ex.P1 : M.E.No.6366
Ex.P2 : M.E.No.9202
Ex.P-3 : ME No.14333
Ex.P-4 : ME No.H12/2014-2015
Ex.P-5 : C/c of Mutation Extract H.155/2015 &
Computer copies.
Ex.P-6 : RTC of Sy.No.455/1
Ex.P-7 : ROR of CTS No.3492

LIST OF WITNESSES EXAMINED ON BEHALF OF THE Defendants:-

: N I L :

LIST OF DOCUMENTS MARKED ON BEHALF OF THE Defendants:-

: N I L :

**Prl. Senior Civil Judge
Jamkhandi.**