

IN THE COURT OF THE SENIOR CIVIL JUDGE AND JMFC
AT ANEKAL, BANGALORE RURAL DISTRICT.

Present: Sri. T. Govindaiah, B.Com., LL.B.,
Senior Civil Judge, Anekal.

O.S. No.612/2013

Dated this the 17th day of Feb, 2016

Plaintiff/s : 1. Smt. Yallamma,
W/o Late Narayanappa,
Aged about 50 years,

2. Sri. Subramani,
S/o Late Narayanappa,
Aged about 28 years,

Both are residing at,
Chikkere Bagilu,
Ward No.22,
Anekal Town and Taluk,
Bangalore Urban District.

3. Sri. Murali,
S/o Late Murthy,
Aged about 22 years,
Residing at,
Santhe Beedi,
Ward No.1,
Anekal Town and Taluk,
Bangalore Urban District.

(Rept., by Sri. B.E.N)

V/s

Defendant/s : 1. Smt. Lakshamma,
W/o Late Krishnappa,
Aged about 52 years,

2. Smt. Madhavi,
D/o Late Krishnappa,
Aged about 30 years,
3. Sri.Basava,
S/o Late Krishnappa
Aged about 28 years,
4. Sri. Ganesh,
S/o Late Krishnappa,
Aged about 26 years,
5. Sri. Ramakrishna @ Ramu,
S/o Gopalappa,
Aged about 38 years,
6. Sri. Govindaraju,
S/o Gopalappa,
Aged about 35 years,
7. Sri. Balaraju @ Balu,
S/o Gopalappa,
Aged about 26 years,
8. Sri. Purushotham,
S/o Gopalappa,
Aged about 28 years,
9. Smt. Rajamma,
D/o Yattodappa,
W/o Late Ramappa,
Aged about 53 years,
10. Smt. Suguna,
D/o Late Ramappa,
Aged about 25 years,
11. Sri. Suresh,
S/o Late Ramappa,
Aged about 23 years,

12. Smt. Shila,
D/o Late Ramappa,
Aged about 20 years,

13. Sri. Nagaraj,
S/o Late Yattodappa,
Aged about 50 years,

14. Smt. Vasantamma,
W/o Nagaraj,
Aged about 48 years,

15. Sri. Shankar,
S/o Nagaraj,
Aged about 30 years,

16. Sri. Shivu,
S/o Nagaraj,
Aged about 30 years,

17. Sri. Ramanji,
S/o Late Yattodappa,
Aged about 50 years,

18. Smt. Pachamma,
W/o Ramanji,
Aged about 45 years,

Defendants No.1 to 18 are
Residing at,
Bidaraguppe Village,
Attibele Hobli,
Anekal Taluk,
Bangalore Urban District.

19. Sri. A.N. Venu,
S/o Late Narayanaswamy,
Aged about 39 years,

Residing at,
Belalappa Layout,
Attibele Village,
Indlabele Road,
Attibele Hobli,
Anekal Taluk,
Bangalore Urban District.

(Rept., by Sri. C.V.K for
D.19 and D.1 to 18 are
placed exparte)

Date of Institution of the suit	:	19-08-2013		
Nature of Suit	:	Partition		
Date of commencement of Recording of the evidence	:	19-02-2015		
Date of which the judgment was pronounced	:	17-02-2016		
Total Duration	:	Year/s 02	Month/s 05	Day/s 28

(T. Govindaiah)
Senior Civil Judge,
Anekal.

J U D G M E N T

The plaintiffs have filed the present suit against the defendants for seeking the relief of partition and separate possession of their legitimate share over the suit property and declaration declaring that the sale deed dated 17.06.2013 executed by the defendants No.1

to 18 in favour of the defendant No.19 in respect of suit property is not binding on the plaintiffs and the same is created and concocted document, permanent injunction, for costs and other relief.

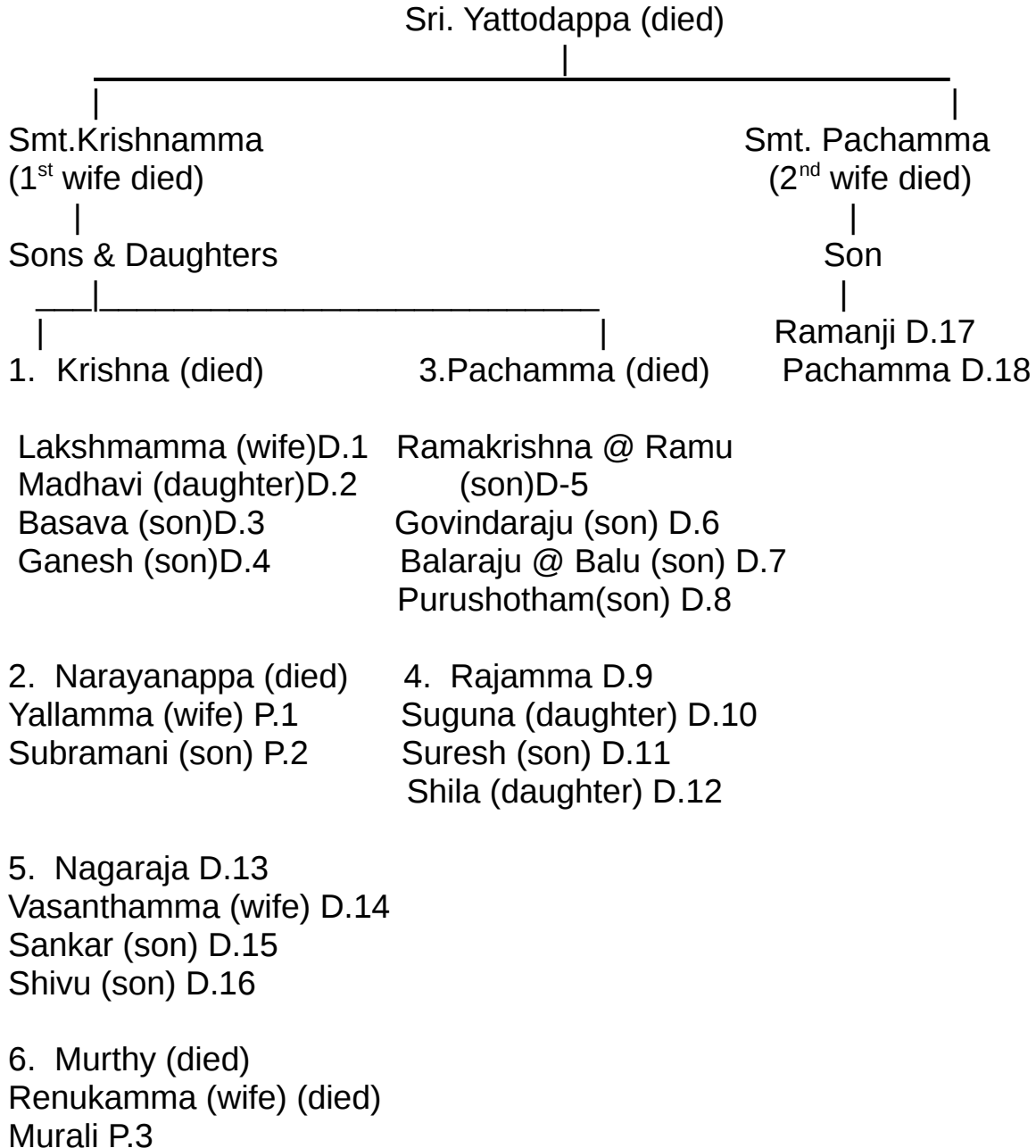
SCHEDULE PROPERTY

All that piece and parcel of the property bearing Old Sy. No.13 and New Sy. No.540 measuring an extent of 0.30 guntas, situated at Bidaraguppe Village, Attibele Hobli, Anekal Taluk, Bangalore District.

2. The brief facts of the plaintiffs case are:-

The plaintiffs and defendants No.1 to 18 are the members of the Hindu Undivided Joint Family and the suit property is the ancestral and joint family property of them. Defendant No.19 is the stranger to their family. The suit property originally belongs to one Yattodappa who is the father-in-law of the plaintiff No.1 and grandfather of the plaintiffs No.2 & 3 and he acquired the suit property through the Grant Certificate issued by the Government. On the basis of the Grant Certificate, the name of Yattodappa has been recorded in the revenue records of the suit property. After the death of Yattodappa, the plaintiffs and defendants No.1 to 18 have succeeded the suit property and they are in joint possession of the same. The plaintiffs and defendants No.1 to 8 being the joint family

members, they are succeeded the suit property by way of inheritance. Till today, there is no partition between the plaintiffs and defendants in respect of suit property. The genealogical tree of their family is as hereunder;



The defendants are trying to mis-mange the suit property and they have also neglected the welfare of plaintiffs. Accordingly, the plaintiffs do not wish to continue in the joint family. Thereafter, the plaintiffs demanded their legitimate share over the suit property. But, the defendants intentionally refused to allot the legitimate share of plaintiffs over the suit property. The plaintiffs being the joint family members, they are having $2/7^{\text{th}}$ share over the suit property. Recently, on 15.06.2013, the defendants refused to allot the share of plaintiffs over the suit property. When such being the facts, in the month of July 2013, on 22.07.2013 the defendant No.19 who is utter strangers to the family of plaintiffs and defendants No.1 to 18, he came near the suit property along with his large number of supporters, workers, sub-ordinates and rowdy elements trespassed into the suit property. They are also attempted to dispossess the plaintiffs from the possession of the suit property. At that time, the plaintiffs with great effect resisted the illegal act of the defendant No.19. Upon enquiry, the plaintiffs came to know that the defendants No.1 to 18 have illegally alienated the suit property in favour of defendant No.19 through the sale deed dated 17.06.2013. The said sale deed executed by the defendant No.9 without the knowledge and behind the back of plaintiffs. The defendant No.19 in collusion

with defendants No.1 to 18 created the sale deed dated 17.06.2013. Therefore, the said sale deed is not binding on the rights of plaintiffs over the suit property. The plaintiffs being the members of the Hindu Undivided Joint Family, they are having legitimate share over the suit property. Hence, this suit.

3. After issuance of summons, the defendants No.1 to 18 remained absent and placed *exparte*. Defendant No.19 appeared before the court through his counsel, but not filed any written statement, in spite of sufficient opportunity given by the court. Lastly, the written statement of the defendant No.19 taken as not filed. Then the case was posted for plaintiffs side evidence.

4. During the course of trial, the plaintiff No.3 has been examined as P.W.1 and 21 documents have been got marked as Ex.P.1 to 21 and closed their side. Further, the defendant No.19 has not chosen to cross-examine the P.W.1 in spite of sufficient opportunity given by the court. The evidence of the defendant No.19 is taken as nil.

5. Heard Arguments.

6. The following points that would arise for the consideration of this court are as under:

1. Whether the plaintiffs prove that they are the members of the Hindu Undivided Joint Family and the suit property is the ancestral and joint family property of them?
2. Whether the plaintiffs are entitled for the relief as sought for?
3. What order or decree?

7. Perused the oral and documentary evidence placed before the court.

8. My answers to the above points are as follows: -

Point No.1 : In the Negative

Point No.2 : In the Negative

Point No.3 : As for final order
for the following;

REASONS

9. **Point No.1**:- As stated above, the plaintiffs have filed the present suit against the defendants for seeking the relief of partition and separate possession of their legitimate share over the suit property and also the declaration declaring that the sale deed dated 17.06.2013 executed by the defendants No.1 to 18 in favour of

defendant No.19 is not binding on them. In order to prove the plaintiffs case, plaintiff No.3 has been examined as P.W.1 and 21 documents have been got marked as Ex.P.1 to 21. In the affidavit evidence of P.W.1, he states that the suit property is the ancestral and joint family property of them. The plaintiffs being the legal heirs of Yattodappa, they are having legitimate share over the suit property. There is no partition between the plaintiffs and defendants No.1 to 15 in respect of suit property. Recently, the defendants are trying to mismanage the suit property. Accordingly, they have demanded their legitimate share over the suit property. He also states that recently, the plaintiffs came to know that the defendants No.1 to 18 have alienated the suit property in favour of defendant No.19 behind the back and without the knowledge of plaintiffs. Therefore, the said sale deed dated 17.06.2013 is not binding on them. In support of the say of P.W.1, he produced the genealogical tree of their family, MR copy, RTC of the suit property and sale deed dated 17.06.2013 as per Ex.P.1 to 21.

10. It is true that the defendants No.1 to 18 remained absent and placed exparte and also defendant No.19 has not filed any written statement and they have also not chosen to cross-examine

the P.W.1. But, it is the duty of the plaintiffs to prove their case by producing believable evidence. As stated above, the plaintiffs are claiming 2/7th share over the suit property. Admittedly, the suit property granted in favour of Yattodappa in case No.LNDSR No.104/77-78 dated 12.12.1978. After the death of Yattodappa, the defendants No.1, 9, 13 & 17 have entered their names to the RTC of the suit property. But, the plaintiffs have not challenged the said entries in the RTC of the suit property. If really, the plaintiffs have any right over the suit property, they have to challenge the said entries before the competent forum. But, they fail to do so. Admittedly, Yattodappa died long back. After the death of Yattodappa, the plaintiffs have not taken any steps to enter their names to the suit property. The plaintiffs have slept over their rights in respect of suit property. Further, except producing Ex.P.1, the plaintiffs have not produced any believable evidence to prove their relationship with Yattodappa. Further, P.W.1 being 22 years, he states about his relationship with Yattodappa. But, P.W. is the sixth generation as per Ex.P.1. Therefore, the plaintiffs have not examined any independent witnesses or any persons to prove their relationship with Yattodappa. Admittedly, the defendants No.1 to 18 have alienated the suit

property in favour of defendant No.19 through the sale deed dated 17.06.2013. Now, the defendants No.1 to 18 are remained absent and placed exparte. These facts clearly go to show that the plaintiffs have filed the present suit on the instigation of defendants No.1 to 18. Further, the plaintiffs have not been claiming any share in respect of other properties belongs to their family. Therefore, the suit of the plaintiffs is partial partition. On perusal of the evidence of P.W.1 and Ex.P.1 to 21, it is clear that the plaintiffs have slept over their rights for a long time. Under such circumstances, the plaintiffs failed to prove that the suit property is the ancestral and joint family property of them.

11. It is important to note that the evidence of P.W.1 is not sufficient to establish his relationship with Yattodappa. Except genealogical tree, the plaintiffs have not produced any believable evidence to prove their relationship with suit property. Therefore, the plaintiffs have failed to prove their joint family status with defendants No.1 to 8 and they have also failed to prove that the suit property is the ancestral and joint family property of them. Accordingly, Point No.1 is answered in the Negative.

12. **Point No.2** :- As discussed above, the plaintiffs have failed to prove and establish their joint family status with defendants and also they failed to prove and establish that the suit property is the ancestral and joint family property of them. When the plaintiffs failed to prove the above said facts, naturally they are not entitled for any share in the suit property. Accordingly, Point No.2 is answered in the Negative.

13. **Point No.3** :- In view of the above findings on points No.1 and 2, this court proceeds to pass the following;

ORDER

The suit of the plaintiffs is dismissed.

Parties to bear their own cost.

(Dictated to the stenographer, transcribed by him, corrected by me and then pronounced in the open court on this 17th day of Feb, 2016).

(T. Govindaiah)
Sr. Civil Judge,
Anekal.

ANNEXTURE

List of witnesses examined for the plaintiffs;

P.W.1 : Murali

List of documents marked for the plaintiffs;

Ex.P.1 : Genealogical Tree
Ex.P.2 : MR Copy

Ex.P.3 to 12 : RTC extracts
Ex.P.13 : MR copy
Ex.P.14 to 20 : RTC extracts
Ex.P.21 : Sale deed dated 17.06.2013

List of witnesses examined for the defendants:- Nil**List of documents marked for the defendants:- Nil**

Sr. Civil Judge,
Anekal

JUDGMENT PRONOUNCED IN THE OPEN
COURT VIDE SEPARATE JUDGMENT

The suit of the plaintiffs is dismissed.

Parties to bear their own cost.

Senior Civil Judge,
Anekal