

Government of Karnataka

TITLE SHEET FOR JUDGMENT IN SUITS

IN THE COURT OF THE CIVIL JUDGE & J.M.F.C.

GUDIBANDE

Present: **Sri.VINODKUMAR.M B.A.L.,L.L.B.,LLM.,**
Civil Judge, Gudibande

Dated: this the 16th day of November 2017

Original Suit No.121/2009

Smt.Jayanthi W/o S.Varadaraj,
Age 35 years, R/at 4th Main,
Chowdareddipalya,
Chinthamani Town,
Chikkaballapur Dist.

... Plaintiff

V/S

1. Aswathamma Dead by Legal heirs on record.
2. Adilakshmmamma W/o Sathyanarayanapppp,
Aged 45 years, R/at Bodikadirepalli Village,
Mittemari Hobli, Bagepalli Taluk,
Chikkaballapur District.
3. Smt.Narayanamma W/o Subbapppa,
Aged 43 years, R/at Bavasandra Village,
Chikkaballapur Town.
4. Aswathanarayana S/o Subbanna, Aged 41 years,
5. Ramaswamy S/o Subbanna, Aged 36 years,

Both are R/at Julapalya Village,
Mittemari Hobli, Bagepalli Taluk
6. Narayanamma D/o Ramaswamy,
Aged 65 years, R/at Bodikadirepalli Village,
Mittemari Hobli, Bagepalli Taluk,

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Chikkaballapur District.

7. V.N.KrishnaMurthy S/o.

Narayanappa & Subbalakshamma,

Aged 44 years,

Working as Assistant Engineer office,

APMC Yard, Puttur Town,

Dakshina Kannada District

...

Defendants

Plaintiff : Sri.SR, Advocate

Defendants No.1 to 5: Sri.NS, Advocate

Defendant No.6: Placed Exparte

Defendant No.7: Sri.PR Advocate

Date of institution of suit	18-08-2009
Nature of the suit	Partition & Separate possession
Date of the recording of evidence.	15-01-2013
Date on the judgment was pronounced.	16-11-2017
Total duration	Year/s : Month/s : day/s
	08 02 28

(VINODKUMAR.M.)

Civil Judge, Gudibanda**:: J U D G E M E N T ::**

This is a suit filed by the plaintiff against the defendants for the relief of partition and separate possession of the suit schedule property into two equal shares and allot one such share to the plaintiff and defendants No.1 to 5 jointly and one such share to the defendant No.6 by metes and bounds pertaining to suit schedule property and for costs of the suit.

SUIT SCHEDULE PROPERTY

The land bearing Sy.No.7, totally measuring 7 acres 0-20 guntas, out of which 3 acres only, situated at Gopuradahalli Village, Somenahalli Hobli, Chikkaballapur District.

2. The brief fact of the plaintiff's case is as follows:-

Original prepositus of family by name Ramaswamy Reddy and wife Narayanamma got two daughters namely Aswathamma and Narayanamma, who are defendants No.1 & 6. Out of two daughters, 1st daughter Ashwathamma married and living in Julapalya village and she got five children namely 1st Adilakshamma, 2nd

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Narayanamma, 3rd Aswathanarayana, who are defendants No.2 to 4, 4th Jayanthi (plaintiff) and 5th Ramaswamy (defendant No.5). 2nd daughter of Ramaswamy Reddy by name Narayanamma married and got eight children. She is representing the head of the family. It is further that, she and defendants No.1 to 6 are the members of undivided joint family and the suit property is their ancestral joint family property. They are in joint possession and enjoyment of suit property as coparceners. Originally, the suit property bearing Sy.No.7, measuring 7 acres 0-20 guntas belongs to Ramaswamy Reddy and he had gifted entire property in favor of Subbalakshamma w/o Narayanappa on 18/12/1959. Thereafter, Ramaswamy Reddy had purchased the land to an extent of 4 acres 0-20 guntas on 19/12/1967 from said Subbalakshamma. On the strength of sale deed, Ramaswamy Reddy sold 1 acre 0-20 guntas to one Abdul sabi S/o Sabusabi under Registered sale deed on 13/8/1967 and retained 3 acres of land. It is further submits that, defendant No.7 is the son of Subbalakshmma got katha into his name to the entire extent of suit property in collusion with the revenue authorities and he has no right, title, interest or possession over the suit property. She and defendants No.1 to 6 are in joint possession and enjoyment of 3

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acres of their joint family. She along with defendants No.1 to 5 have got half share and defendant No.6 is entitle for half share along with children. She has demanded her share with defendants No.6 & 7 in the month of June – 2009 when they refused to effect partition. The cause of action for the suit arose in the first week of June 2009 within the jurisdiction of this court. Hence, she constrained to file suit for the relief of partition and separate possession.

3. After service of suit summons, the defendants No.1 to 5 have appeared through their counsel and admitted the claim of the plaintiff and consent to decree the suit as prayed by the plaintiff. Consequently, the suit is decreed by placing defendant No.7 as exparte. Hence, defendant No.7 has filed Misc.No.4/2013 for restoration of suit by setting aside the exparte judgment & decree before this court and permitted him to proceed the case on merits. After conclusion, the said petition came to be allowed on 18/2/2016 and permitted him to prosecute the case by giving opportunity under natural justice.

4. The defendant No.7 appeared through his counsel and filed his written statement by denying para No.2 to 6 of plaint including relationship between them. Hence, the denial of written statement need not

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necessary to reiterate once again. It is specifically contended that, the plaintiff and defendants No.1 to 6 are strangers to the suit property and they are no way related to him. It is further contended that, one Krishnareddy got two sons namely Ramaswamy Reddy and Narayanappa. Said Ramaswamy Reddy got married with Narayanamma and also Narayanappa got married with Subbalakshamma. All are no more, but Ramaswamy Reddy and Narayanamma had no issues. After their demise Subbalakshamma had inherited the property of Ramaswamy Reddy to an extent of 3 acres with Narayanappa. After death of Subbalakshamma and Narayanappa, he is being legal heir to succeed their estate. During the life time of Ramaswamy Reddy had gifted the entire suit property to Subbalakshamma on 18/12/1965 and once again Ramaswamy Reddy purchased to an extent of 4 acres 0-20 guntas of suit property survey number from Subbalakshamma. Out of which, Ramaswamy Reddy sold to an extent of 1 acre 0-20 guntas to Abdul Sabi and retained 3 acres. After death of his parents, he got katha vide M.R.No.1/1988-89 to an extent of 5 acres 0-26 guntas in suit property. He is the absolute owner in possession of suit property survey number to an extent of 5 acres 0-26 guntas having RTC extracts and paying taxes to the revenue

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authority. Since, there is no any interference from the plaintiff and defendants No.1 to 6 till today. On these grounds, He prays to dismiss the suit with exemplary cost.

5. On the basis of the pleadings, this court has framed the following Issues:

- (1) Whether the plaintiff proves that, herself and defendants No.1 to 6 are the members of Hindu Undivided joint family and the suit schedule property is the ancestral and joint family property of plaintiff and defendants No.1 to 6 and they are in joint possession of the same?
- (2) Whether the Defendant No.7 proves that, One Ramaswamy Reddy has executed a gift deed in favor of Smt.Subbalakshamma on 18/12/1959?
- (3) Whether the defendant No.7 proves that, He is the absolute owner of property to an extent of 5 acres 0-26 guntas claimed through MR.No.1/1988-89?
- (4) Whether the plaintiff is entitle for relief as sought in the plaint?
- (5) What order or decree?

6. In order to prove the case of the plaintiff, herself is examined as Pw.1, but she could not able to tender for cross examination due to her ill health and she has

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appointed GPA holder to prosecute the case on her behalf. The court also permitted the GPA holder to proceed the case on behalf of the plaintiff on merits. After discard the evidence of Pw.1, the GPA holder of the plaintiff is examined as Pw.2 and got marked Ex-P.1 to 17 and two witnesses are examined as Pw.3 & 4. On the other hand the defendant No.7 is examined as Dw.1 and two witnesses examined as Dw.2 & 3 and got marked Ex-D1 to 17 and closed both sides evidence.

7. Heard the arguments of learned counsel for the plaintiff and defendant No.7.

8. On considering the pleadings, the oral and documentary evidence and on hearing the arguments of learned counsel for the plaintiff and defendant No.7, my findings to the above said issues are as under:

Issue No.1 : In the Negative
Issue No.2 : In the Affirmative
Issue No.3 : In the Affirmative
Issue No.4 : In Negative
Issue No.5 : As per the following :

:: R E A S O N S ::

9. Issue No.1: This is the suit filed by the plaintiff against the defendants for the relief of partition and separate possession of half share by meets and bounds

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in the suit property. The onus is on the plaintiff alone. She desires the court to give judgment on the existence of facts which asserts her legal right must prove that those facts exists as contemplated U/s.101 of the Indian Evidence Act.

10. It is specific contention of the plaintiff that, she & defendants No.1 to 6 are the members of Hindu undivided joint family and suit schedule property is the ancestral joint family property and they are in joint possession. In order to prove the case, the GPA holder of the plaintiff has filed his chief examination affidavit and examined as Pw.2 and reiterated the plaint pleadings. To substantiate the same the GPA holder of the plaintiff has produced Ex.P.1 is the copy of GPA, Ex.P.2 & 16 are family tree, Ex.P.3 to 5 are true copies of gift deed and two sale deeds, Ex.P.6 is the Encumbrance Certificate, Ex.P.7 to 11, 15 & 17 are old and new RTC extracts, Ex.P.12 & 14 are two mutation registers and Ex.P.13 is a sale deed. On the other hand the defendant No.7 filed his written statement by denying the relationship between them and also the plaintiff and defendants No.1 to 6 are strangers to suit property and they are no way related to their family. In order to disprove the case of plaintiff, the defendant No.7 has filed his chief examination affidavit and examined as Dw.1 and reiterated the written

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statement contents. To substantiate the same Dw.1 has produced Ex.D.1 to 11 & Ex.D.15 are the RTC extracts pertaining to suit property, Ex.D.12 and 13 are original gift deed and sale deed, Ex.D.14 is the mutation extract, Ex.D.16 is a tax paid receipt and Ex.D.17 is the death certificate of Subbalakshamma.

11. On perusal of the rival contention and documents produced by both parties. Here, the relationship of plaintiff and defendants No.1 to 6 along with defendant No.7 is in dispute and specifically denied. Therefore, before considering whether the plaintiff is the member of Hindu undivided joint family with defendants No.1 to 6 and the suit property is their ancestral property, we have to discuss the relationship between the parties. In order to prove the relationship between the parties, the GPA holder of the plaintiff i.e., son is examined as Pw.2 and deposed in his chief examination that, original prepositus of family by name Ramaswamy Reddy and his wife Narayanamma got two daughters namely Aswathamma and Narayanamma, who are defendants No.1 & 6. Out of two daughters, 1st Daughter Aswathamma got five children namely 1st Adilakshamma, 2nd Narayanamma, 3rd Aswathanarayana, who are defendants No.2 to 4, 4th daughter Jayanthi (none other than mother of GPA

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Holder) and 5th son Ramaswamy (defendant No.5). 2nd daughter of Ramaswamy Reddy by name Narayanamma got eight children. To substantiate the same Pw.1 relied Ex.P.2 and Ex.P.16 are family trees issued by the concerned gram panchayath clearly goes to show that, the plaintiff and defendants No.1 to 6 are the family members of one Ramaswamy Reddy. During the course of cross examination Pw.2 himself admitted regarding relation ship between parties as per Ex.P.3 gift deed as follows: ನಿಪಿ 3 ರ ದಾನಪತ್ರದ “ಪಟೇಲ್ ರಾಮಸ್ವಾಮಿರೆಡ್ಡಿ ಆದ ನಾನು ಬರೆದುಕೊಟ್ಟ ದಾನಪತ್ರ ಏನೆಂದರೆ ನನಗೆ ಹೆಣ್ಣು ಗಂಡು ಮಕ್ಕಳು ಇರುವುದಿಲ್ಲ. ನನಗೆ ಹಾಲಿ ಇರುವ ಕೆಳಗೆ ಕಂಡ ಪೆಡ್ಕೂಲಿನಲ್ಲಿ ಸುಮಾರು ಐದು ನೂರು ರೂಪಾಯಿಗಳ ಬೆಲೆ ಬಾಳುವ ಸ್ಥಿರ ಸ್ವತ್ತನ್ನು ನನ್ನ ತಮ್ಮ ನಾರಾಯಣಪ್ಪನ ಹೆಂಡತಿ ಸುಬ್ಬಲಕ್ಷ್ಮಮ್ಮ ಎಂಬುವವರಿಗೆ ಅರಿಶಿನ ಕುಂಕುಮ ಬಗ್ಗೆ ದಾನವಾಗಿ ಕೊಡಬೇಕೆಂದು ಈ ಹಿಂದೆಯೇ ತೀರ್ಮಾನದಂತೆ ಈ ದಿನ ಈ ದಾನಪತ್ರವನ್ನು ಬರೆದು ರಿಜಿಸ್ಟರ್ ಮಾಡಿಕೊಟ್ಟಿರುತ್ತೇನೆ” ಎಂದು ಬರೆದಿರುವ ಒಕ್ಕಣೆಯು ಸರಿಯಾಗಿರುತ್ತದೆ. ನಿಪಿ 3 ರ ದಾನಪತ್ರದಂತೆ ಪಟೇಲ್ ರಾಮಸ್ವಾಮಿರೆಡ್ಡಿರವರಿಗೆ ಗಂಡು ಮತ್ತು ಹೆಣ್ಣು ಸಂತತಿ ಇರುವುದಿಲ್ಲ ಎಂದರೆ ಸರಿ. This admission given by Pw.2 itself clearly goes to show that, one Ramaswamy Reddy had no male or female issues, hence he has executed gift deed pertaining to entire suit survey number property in favor of his brother's wife by name Subbalakshamma W/o Narayanappa. In the further cross examination of Pw.2, he admitted the suggestions regarding relationship as follows: ವಾದಪತ್ರದಲ್ಲಿ ನನ್ನ ತಾಯಿಯ ತಂದೆಯ ಹೆಸರು ನಮೂದು ಮಾಡಿಲ್ಲ ಎಂದರೆ ಸರಿ. 2 ರಿಂದ 5ನೇ ಪ್ರತಿವಾದಿಗಳ ತಂದೆಯ

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ಹೆಸರುಗಳನ್ನು ಸಹಾ ವಾದಪತ್ರದಲ್ಲಿ ನಮೂದು ಮಾಡಿಲ್ಲ ಎಂದರೆ ಸರಿ. 1 ಮತ್ತು 6ನೇ ಪ್ರತಿವಾದಿಗಳು ಯಾವಾಗ ವಿವಾಹ ಆಗಿರುತ್ತಾರೆಂದು ನನಗೆ ಗೊತ್ತಿರುವುದಿಲ್ಲ. 1 ಮತ್ತು 6ನೇ ಪ್ರತಿವಾದಿಗಳ ತಂದೆ ರಾಮಸ್ವಾಮಿರೆಡ್ಡಿ ಎಂದು ತೋರಿಸಲು ವಂಶವೃಕ್ಷವನ್ನು ಹೊರತುಪಡಿಸಿ ಪಡಿತರಚೀಟಿ ಮತ್ತು ಚುನಾವಣಾ ಗುರುತಿನ ಚೀಟಿ ಇರುವುದಿಲ್ಲ. If really the plaintiff and defendants No.1 to 6 claiming over the property of one Ramaswamy Reddy, they ought to mention the name of father or grand father of plaintiff in the plaint and must produce the relevant documents i.e., ration card, election card or school records to prove their relationship[with Ramaswamy Reddy. But either plaintiff or defendants No.1 to 6 did not come forward to produce any documents before this court.

12. On other hand the defendant No.7 contended that, one Krishnareddy got two sons namely Ramaswamy Reddy and Narayanappa. Said Ramaswamy Reddy got married with Narayanamma and also Narayanappa got married with Subbalakshamma. To prove the said relationship by defendant No.7, Pw.1 categorically admitted in his cross examination as follows: ಹಾಲಿ ದಾವೆಯಲ್ಲಿ ರಾಮಸ್ವಾಮಿರೆಡ್ಡಿ ಎಂದು ತೋರಿಸಿರುವ ವ್ಯಕ್ತಿಯ ತಂದೆಯ ಹೆಸರು ಕೃಷ್ಣಾರೆಡ್ಡಿ ಆಗಿರುತ್ತಾರೆ. ಸದರಿ ಕೃಷ್ಣಾರೆಡ್ಡಿರವರಿಗೆ ಇಬ್ಬರು ಮಕ್ಕಳು. ಮೊದಲನೆಯವರು ರಾಮಸ್ವಾಮಿರೆಡ್ಡಿ ಮತ್ತು 2ನೆಯವರು ನಾರಾಯಣಪ್ಪ ಆಗಿರುತ್ತಾರೆ. ಕೃಷ್ಣಾರೆಡ್ಡಿರವರ 2ನೇ ಮಗನಾದ ನಾರಾಯಣಪ್ಪನಿಗೆ ಎಷ್ಟು ಜನ ಮಕ್ಕಳು ಗೊತ್ತಿಲ್ಲ. ಸದರಿ ನಾರಾಯಣಪ್ಪನ ಹೆಂಡತಿಯ ಹೆಸರು ಸುಬ್ಬಲಕ್ಷ್ಮಮ್ಮ. ಸುಬ್ಬಲಕ್ಷ್ಮಮ್ಮನವರ ಮಗನೇ ಕೃಷ್ಣಮೂರ್ತಿ (7ನೇ ಪ್ರತಿವಾ

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ಎ) ಎಂದರೆ ಸರಿ. The said admission clearly goes to show that there is no relationship between plaintiff and defendants No.1 to 6 with deceased Ramaswamy Reddy.

13. It is important to note that, Pw.2 categorically admitted in Ex.P.13 sale deed show that, defendant No.1 Aswathamma i.e., mother of plaintiff and defendant No.6 Narayanamma's ancestor by name Ramaswamy S/o Gangappa of Varlakonda, but as per Ex.P.3 to 5 are gift deed and two sale deeds shows the father's name as Ramaswamy Reddy S/o Krishnareddy. Therefore, it clearly comes to conclusion that the claim of plaintiff in the name of Ramaswamy instead relative of defendant No.7 by name Ramaswamy Reddy are totally different. On the basis of documentary evidence regarding relationship between plaintiff and defendants No.1 to 6 with one Ramaswamy Reddy, Ex.P.2 and Ex.P.16 family trees are not having sanctity under law unless supportive documents.

14. In support of plaintiff's case, Pw.3 & 4 are filed their affidavits in lieu of chief examination and deposed the relationship between plaintiff and defendants No.1 to 6 with one Ramaswamy Reddy as per Ex.P.2 family tree and they are the members of Hindu un-divided joint family and they are in joint possession. They further

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deposed that, there is no partition taken place between them till today. During the course of cross examination Pw.3 himself categorically admitted as follows:

ರಾಮಸ್ವಾಮಿರೆಡ್ಡಿರವರ ಕುಟುಂಬದ ವ್ಯವಹಾರದ ಬಗ್ಗೆ ನನಗೆ ವೈಯುಕ್ತಿಕ ಮಾಹಿತಿ ಇರುವುದಿಲ್ಲ. ರಾಮಸ್ವಾಮಿರೆಡ್ಡಿರವರ ಹೆಣ್ಣುಮಕ್ಕಳೇ 1ನೇ ಪುತಿಯಾದಿ ಅಶ್ವತ್ತಮ್ಮ ಮತ್ತು 6ನೇ ಪುತಿಯಾದಿ ನಾರಾಯಣಮ್ಮ ಎಂದರೆ ಹೇಳಲು ಯಾವುದೇ ದಾಖಲೆ ನಾನು ನೋಡಿರುವುದಿಲ್ಲ.

Pw.4 also categorically admitted as follows:

ರಾಮಸ್ವಾಮಿರೆಡ್ಡಿರವರ ಮಕ್ಕಳು ಇರುವ ಬಗ್ಗೆ ನಾನು ದಾಖಲೆಯನ್ನು ನೋಡಿರುವುದಿಲ್ಲ. ಆದರೆ ಇಬ್ಬರು ಮಕ್ಕಳು ಇರುತ್ತಾರೆ. ರಾಮಸ್ವಾಮಿರೆಡ್ಡಿರವರ ಜೀವಂತ ಕಾಲದಲ್ಲಿ ಇಬ್ಬರು ಮಕ್ಕಳು ಇರುವ ಬಗ್ಗೆ ಯಾವುದಾದರೂ ದಾಖಲೆಯನ್ನು ಮಾಡಿರುವ ಬಗ್ಗೆ ನಾನು ನೋಡಿಲ್ಲ.

The said admissions clearly goes to show that, they doesn't know the family of one Ramaswamy Reddy and they doesn't know how many children to Ramaswamy Reddy and they doesn't seen any documents regarding Ramaswamy Reddy had two children. The evidence of Pw.3 & 4 are corroborated the contention urged by the defendant No.7 regarding relationship between plaintiff and defendants No.1 to 6 with one Ramaswamy Reddy and not supported the plaintiff's case. So the cross examination of Pw.3 & 4 is contradictory to their chief examination affidavits.

15. The relationship between plaintiff and defendants No.1 to 6 with one Ramaswamy Reddy is not proved. Moreover, Pw.2 categorically admitted in his cross examination regarding one Ramaswamy Reddy died

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issueless. It is also seen in Ex.P.3 & 4 about father of Ramaswamy Reddy shown as Krishnareddy and admittedly the ancestor of plaintiff and defendants No.1 to 6 by name Ramaswamy S/o Gangappa as per Ex.P.13. Hence, the admitted fact need not necessary to prove in the proceedings as per Sec.58 of Indian Evidence Act. Thus, all these evidence clearly goes to show that, there is no relationship between plaintiff and defendants No.1 to 6 with one Ramaswamy Reddy. To disprove the contention of defendant No.7, either plaintiff or defendants No.1 to 6 have not produced any piece of documents regarding relationship between them. Ultimately, plaintiff and defendants No.1 to 6 failed to prove how the defendant No.7 being stranger to the suit property. On these grounds, the question of Hindu divided joint family and suit property is their ancestral property and joint possession of plaintiff and defendants No.1 to 6 along with one Ramaswamy Reddy does not arise. Hence, the plaintiff has failed to prove the relationship with one deceased Ramaswamy Reddy. The evidence of Pw.3 & 4 is also not helpful to the case of the plaintiff to prove the relationship of plaintiff and defendants No.1 to 6 along with Ramaswamy Reddy and they are in joint possession of the suit property. The pleadings of the plaintiff are not corroborated to the

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documentary evidence of Ex.P.1 to 17. Therefore in the absence of oral and documentary evidence on behalf of plaintiff regarding relationship with one Ramaswamy Reddy, the court cannot discuss that the plaintiff and defendants No.1 to 6 are the members of Hindu undivided joint family and the suit schedule property is their ancestral property and they are in joint possession. Because without prove the relationship between parties in the partition suit does not consideration at all. Hence I Answered to Issue No.1 in the negative.

16. Issue No.2 & 3: These issues are interconnected to each other in order to prove the acquisition of suit property and ownership of the suit property and also to prove the existence of facts. Accordingly those are taken up together for common discussion. In order to establish the same, the defendant No.7 has filed his affidavit in lieu of chief examination as Dw.1 and deposed that, after demise of his mother by name Subbalakshamma had inherited the property of Ramaswamy Reddy to an extent of 3 acres along with Narayanappa. After death of Subbalakshamma and Narayanappa, he being the legal heir succeeded their estate. Dw.1 further deposed that, during the life time of Ramaswamy Reddy had gifted the entire extent of suit survey number property to Subbalakshamma on

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18/12/1965 and once again Ramaswamy Reddy purchased to an extent of 4 acres 0-20 guntas of suit survey number property. Out of that extent Ramaswamy Reddy sold to an extent of 1 acre 0-20 guntas to Abdul sabi and retained 3 acres. After death of his parents, he got katha vide M.R.No.1/1988-89 to an extent of 5 acres 0-26 guntas in suit survey number property. He is the absolute owner in possession of suit survey number property to an extent of 5 acres 0-26 guntas having RTC extracts and paying taxes to the revenue authority. In order to prove the same, defendant No.7 produced Ex.D.12 as well as Ex.P.3 are one and the same gift deeds goes to show that, original owner of suit property by name Ramaswamy Reddy had executed gift deed to the entire extent of suit property in favor of his brother's wife by name Subbalakshamma. On perusal of Ex.D.12 and Ex.P.3 gift deed, there is a recital that, the original owner of suit property by name Ramaswamy Reddy had no children either male or female. After execution of gift deed by Ramaswamy Reddy, he was purchased to an extent of 4 acre 0-20 guntas once again from one Subbalakshamma through registered sale deed No.490/1965-66 as Per Ex.P.4, but Ex.P4 and Ex.P13 sale deeds are similar one. But here once again Ramaswamy Reddy during his time alienated to an extent

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of 1 acre 0-20 guntas in favor of one Abdul sabi as per Ex.P.5 and retained only 3 acres in his name. It is admitted by both parties that, one Ramaswamy Reddy was original owner of suit property and also he had every right to dispossess the possession during his life time.

17. It is important to note that, after the death of Ramaswamy Reddy, one Subbalakshamma had inherited his property to an extent of 3 acres with Narayanappa. It is further admitted that, one Subbalakshamma and Narayanappa are mother and father of defendant No.7. After their demise, defendant No.7 being the legal heir to succeed their estate and he got katha vide M.R.No.1/1988-89 to an extent of 5 acres 0-26 guntas in suit survey number property as per Ex.D.14 mutation register. On the strength of mutation register, Ex.D.1 to 11 & 15 are RTC extracts clearly goes to show that, the name of defendant No.7 is reflected to an extent of 5 acres 0-26 guntas and paying taxes to revenue department as per Ex.D.16. Since then, neither plaintiff nor defendants No.1 to 6 have challenged the said revenue entries stands in the name of defendant No.7 till today. During the cross examination of Dw.1 deposed as follows; ನಿಜಿ 4 ರಂತೆ ದಿನಾಂಕ 18-12-1959 ರಲ್ಲಿ ಸುಬ್ಬಲಕ್ಷ್ಮಮ್ಮ ಎಂಬುವವರಿಗೆ ರಾಮಸ್ವಾಮಿರವರು ದಾನಪತ್ರ ಬರೆದುಕೊಟ್ಟಿರುತ್ತಾರೆಂದರೆ ಸರಿ. ನಿಜಿ 2 ರಂತೆ ನನ್ನ ತಾಯಿಯವರಾದ ಸುಬ್ಬಲಕ್ಷ್ಮಮ್ಮ ಎಂಬುವವರು ರಾಮಸ್ವಾಮಿರವರಿಗೆ 4 ಎಕರೆ 20

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ಗುಂಟೆ ಜಮೀನು ಕ್ರಯ ಮಾಡಿರುತ್ತಾರೆಂದರೆ ಸರಿ. ನನ್ನ ತಾಯಿ ಕ್ರಯ ಮಾಡಿದ 4 ಎಕರೆ 20 ಗುಂಟೆ ಜಮೀನಿನ ಉಳಿಕೆ ಜಮೀನು ಅವರ ಹೆಸರಿನಲ್ಲಿ ಇರುತ್ತದೆ. ಉಳಿಕೆ 2 ಎಕರೆ 6 ಗುಂಟೆ ಜಮೀನು ನನ್ನ ತಾಯಿಯ ಹೆಸರಿಗೆ ಖಾತೆಯಾಗಿರುತ್ತದೆ. This admission clearly admitted by the plaintiff's counsel regarding execution of gift deed and sale deed between one Ramaswamy Reddy and Subbalakshamma none other than mother of defendant No.7 as per Ex.P.3 & 4 as well as Ex.D.12 & 13. Hence, there is no dispute regarding execution of gift deed by Ramaswamy Reddy in favor of mother of defendant No.7 by name Subbalakshamma to the entire extent of suit survey number property and subsequently, Subbalakshamma was executed sale deed in favor of Ramaswamy Reddy to an extent of 4 acres 0-20 guntas to the entire extent of suit property.

18. Defendant No.7 in support of his case, examined witnesses as Dw.2 & 3, they filed their chief examination affidavits and deposed that, they knows defendant No.7, one Ramaswamy Reddy and Subbalakshamma in their village and Ramaswamy Reddy and Subbalakshamma were died 40 years ago. They further deposed that, one Ramaswamy Reddy had no issues and after death of both persons, since beginning the defendant No.7 is in possession and raising crops to an extent of 5 acres 0-26 guntas. In turn Dw.2 tendered for cross examination admitted as follows:

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ಗನೇ ಪ್ರತಿವಾದಿಯ ತಾತನ ಹೆಸರು ನನಗೆ ಗೊತ್ತಿಲ್ಲ. ರಾಮಸ್ವಾಮಿರೆಡ್ಡಿರವರು ಎಲ್ಲಿ ಮದುವೆಯಾಗಿರುತ್ತಾರೆ ಮತ್ತು ಅವರ ಹೆಂಡತಿ ಹೆಸರು ನನಗೆ ಗೊತ್ತಿಲ್ಲ. ರಾಮಸ್ವಾಮಿರೆಡ್ಡಿರವರ ಹೆಂಡತಿಯನ್ನು ನಾನು ನೋಡಿರುವುದಿಲ್ಲ. ರಾಮಸ್ವಾಮಿರೆಡ್ಡಿ ಮಾರಾಟ ಮಾಡಿಎಷ್ಟು ಜಮೀನುಗಳನ್ನು ಉಳಿಸಿಕೊಂಡಿರುತ್ತಾರೆಂದು ಗೊತ್ತಿಲ್ಲ. In the same manner Dw.3 also admitted in his cross examination as follows: ಗನೇ ಪ್ರತಿವಾದಿಯ ತಾತನ ಹೆಸರು ಗೊತ್ತಿಲ್ಲ. ರಾಮಸ್ವಾಮಿರೆಡ್ಡಿರವರ ತಂದೆಯ ಹೆಸರು ಮತ್ತು ಹೆಂಡತಿಯ ಹೆಸರು ಸಹಾ ಗೊತ್ತಿಲ್ಲ. ಹಾಲಿ ದಾವೆಯನ್ನು ಎಷ್ಟು ವಿಸ್ತೀರ್ಣಕ್ಕೆ ಹಾಕಿರುತ್ತಾರೆಂದು ನನಗೆ ಗೊತ್ತಿಲ್ಲ. This admission clearly goes to show that, Dw.2 & 3 doesn't know the family of Ramaswamy Reddy and his wife's name. They further admitted in their cross examination that they doesn't know the property belongs to Ramaswamy Reddy and for which extent the plaintiff has filed the present suit. On perusal of chief examination and cross examination of Dw.2 & 3 are contradictory to each other. Hence, the court cannot believe their evidence unless knowing the complete information regarding family of parties and properties. Dw.2 & 3 came to depose only to help defendant No.7 without knowing complete facts and circumstances of the suit. Hence, the evidence of Dw.2 & 3 is not having any legal sanctity in the eye of law.

19. It is important to note that, the plaintiff has relied the Ex.P.7 to 13 are old RTC extracts and Mutation register clearly goes to show that, originally property

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belongs to one Ramaswamy S/o Krishnappa nothing but Ramaswamy Reddy S/o Krishnareddy and Subbalakshmmamma reflected their names in the revenue documents and subsequently the katha of suit property has been changed in the name of defendant No.7 as per Ex.P.12 including revenue entries reflected in his name as per Ex.P.7, 8 & 17. In the same manner Pw.2 also categorically admitted in his cross examination as follows; ದಾವಾ ಸರ್ವೆ ನಂಬರ್ 7 ರ ಒಟ್ಟು ವಿಸ್ತೀರ್ಣವನ್ನು ಪಟೇಲ್ ರಾಮಸ್ವಾಮಿರೆಡ್ಡಿರವರು 7ನೇ ಪ್ರತಿವಾದಿಯ ತಾಯಿಯವರಿಗೆ ದಿನಾಂಕ 18-12-1959 ರಂದು ನೋಂದಾಯಿತ ದಾನಪತ್ರವನ್ನು ಬರೆದುಕೊಟ್ಟಿರುತ್ತಾರೆಂದರೆ ಸರಿ. ಸದರಿ ದಾನಪತ್ರದ ಬಗ್ಗೆ ನನ್ನ ಮತ್ತು ನನ್ನ ತಾಯಿ ತಕರಾರು ಏನೂ ಇರುವುದಿಲ್ಲ. and further admitted regarding ownership of defendant No.7 in his cross examination as follows: ನಿಜ 7 ರಿಂದ 12 ಮತ್ತು 17 ರ ಪಹಣಿ ಪತ್ರಿಕೆಗಳಲ್ಲಿ ಅಬ್ದುಲ್‌ಸಾಬಿ, ವಿ.ಎನ್.ಕೃಷ್ಣಮೂರ್ತಿ, ರಾಮಸ್ವಾಮಿ ರವರ ಹೆಸರಿನಲ್ಲಿ ಬರುತ್ತಿದೆ ಎಂದರೆ ಸರಿ. ನಿಜ 7 ರಿಂದ 12, 17 ರ ಪಹಣಿ ಪತ್ರಿಕೆಯ ದಾಖಲೆಗಳು ಕ್ರಯಪತ್ರ ಮತ್ತು ಮ್ಯುಟೇಷನ್. ಆಧಾರದ ಮೇಲೆ ನಮೂದು ಆಗಿರುತ್ತದೆಂದರೆ ಸರಿ. Pw.3 is also admitted in his cross examination regarding ownership of defendant No.7 to an extent of 5 acres 0-26 guntas of suit property as follows; ಸರ್ವೆ ನಂ.7 ರ ವಿಸ್ತೀರ್ಣ 5 ಎಕರೆ 26 ಗುಂಟೆಯಲ್ಲಿ 7ನೇ ಪ್ರತಿವಾದಿಯೇ ಸ್ವಾಧೀನದಲ್ಲಿ ಇದ್ದು ಬೆಳೆಯನ್ನು ಬೆಳೆಯುತ್ತಿದ್ದರು ಎಂದರೆ ಸರಿ. ಸರ್ವೆ ನಂ.7 ರ ವಿಸ್ತೀರ್ಣ 5 ಎಕರೆ 26 ಗುಂಟೆ ಜಮೀನಿನ ಪಹಣಿಯು 7ನೇ ಪ್ರತಿವಾದಿಯ ಹೆಸರಿನಲ್ಲಿ ಬರುತ್ತಿದೆ ಎಂದರೆ ಸರಿ. Pw.4 also admitted in his cross examination regarding possession of Defendant

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No.7 since beginning as follows: ಸರ್ವೆ ನಂ.7 ರ 5 ಎಕರೆ 26 ಗುಂಟೆ ವಿಸ್ತೀರ್ಣವು ನಿಜ 8 ರಂತೆ 7ನೇ ಪ್ರತಿವಾದಿಯ ಹೆಸರಿನಲ್ಲಿ ಬರುತ್ತಿದೆ ಎಂದರೆ ಸರಿ. ನಿಜ 8 ರ ಪಹಣಿಯಂತೆ 1988-89 ರಿಂದಲೂ ಸಹಾ 7ನೇ ಪ್ರತಿವಾದಿಯ ಹೆಸರಿನಲ್ಲಿ ಪಹಣಿ ಬರುತ್ತಿದೆ ಎಂದರೆ ಸರಿ. ಸಾಕ್ಷಿಗೆ 11 ಗಣಕೀಕೃತ ಪಹಣಿಗಳನ್ನು ತೋರಿಸಲಾಯಿತು. ಸದರಿ ಪಹಣಿಗಂತೆ 2001 ರಿಂದ 2012 ರವರೆಗೂ ಸರ್ವೆ ನಂ.7 ರ 5 ಎಕರೆ 26 ಗುಂಟೆ ವಿಸ್ತೀರ್ಣವು 7ನೇ ಪ್ರತಿವಾದಿಯ ಹೆಸರಿನಲ್ಲಿ ಬರುತ್ತಿದೆ ಎಂದರೆ ಸರಿ ಎಂದು ಒಪ್ಪಿಕೊಂಡಿರುತ್ತಾರೆ. ಆದ್ದರಿಂದ ಸದರಿ 11 ಗಣಕೀಕೃತ ಪಹಣಿಗಳನ್ನು ನಿಡಿ 1 ರಿಂದ 11 ಎಂದು ಗುರುತಿಸಲಾಯಿತು. ನಿಡಿ 1 ರಿಂದ 11 ರ ಪಹಣಿಗಳಂತೆ 5 ಎಕರೆ 26 ಗುಂಟೆಯಲ್ಲಿ 7ನೇ ಪ್ರತಿವಾದಿ ಬೆಳೆಯನ್ನು ಬೆಳೆಯುತ್ತಿರುತ್ತಾರೆಂದರೆ ಸರಿ. 7ನೇ ಪ್ರತಿವಾದಿಯು ಸುಬ್ಬಲಕ್ಷ್ಮಮ್ಮನ ಮಗ ಎಂದರೆ ಸರಿ. ಸುಬ್ಬಲಕ್ಷ್ಮಮ್ಮನಿಗೆ 7ನೇ ಪ್ರತಿವಾದಿ ವಾರಸುದಾರ ಎಂದರೆ ಸರಿ. On perusal of documentary evidence relied by Pw.2 as per Ex.P.7, 8 & 17 and admission given by Pw.2 to 4 in their cross examination, it is crystal clear that, one Ramaswamy Reddy was the absolute owner of suit property bearing Sy.No.7, totally measuring 7 acres 0-6 guntas and he had executed gift deed to entire extent of suit property in favor of one Subbalakshamma (mother of defendant No.7) as per Ex.P.3. After demise of Ramaswamy Reddy issueless, one Subbalakshamma and Narayanappa being legal heirs to succeeded his estate. After demise the parents of defendant No.7, he got katha vide M.R.No.1/1988-89 to an extent of 5 acres 0-26 guntas in suit survey number property as per Ex.D.14 and reflected his name in the revenue entries as per Ex.D.1 to 11. Hence, there is no reason to reject the claim of the

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defendant No.7. Hence it clearly held that, the defendant No.7 is the absolute owner in possession of suit survey number property to an extent of 5 acres 0-26 guntas having RTC extracts and paying taxes to the revenue authority. Hence, I answered to Issue No.2 & 3 in Affirmative.

20. Issue No.4: In view of my findings on issue No.1, the plaintiff has not proved the relationship between herself and defendants No.1 to 6 with one Ramaswamy Reddy. Therefore, the question of plaintiff is the member of Hindu undivided joint family with defendant no.1 to 6 with Ramaswamy Reddy and the suit schedule property is the ancestral joint family property does not arise for consideration.

21. It is important to note that, earlier the present suit came to be decreed without contesting the defendant No.7 and later on the defendant No.7 filed miscellaneous appeal for set-aside the exparte judgment and decree passed by this court in present case. After perusing the materials, the same is set-aside by giving opportunity to both parties. On perusal of entire records available in present case, it is crystal clear that neither plaintiff nor defendants No.1 to 6 have relationship with one Ramaswamy Reddy. The plaintiff and defendants No.1 to

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6 are not produced any documents to show regarding relation ship with one Ramaswamy Reddy being their ancestors. Pw.2 in his cross examination admitted regarding one Ramaswamy Reddy had no issues either male or female during his life time and the further oral deposition of Pw.1 to 4 about relation ship between plaintiff and defendants No.1 to 6 with Ramaswamyreddy does not arise for consideration, because Ex.P.3 gift deed categorically speaks regarding one Ramaswamy Reddy himself recited as he had no children in his life time. Hence, Ex.P.3 documentary evidence always prevails over oral evidence of Pw.1 to 4 in the present case. It is further admitted by Pw.1 to 4 in their cross examination and Ex.P.1 to 17 documents clearly reveals regarding defendant No.7 being absolute owner in possession and raising crops to an extent of 5 acres 26 guntas since 1988. Moreover that, the plaintiff and defendants No.1 to 6 have no right to claim over property of one deceased Ramaswamy Reddy without relationship between them.

22. On perusal of entire pleadings and documentary evidence of the plaintiff clearly goes to show that, suit of plaintiff is having so many latches in the eye of law. In the absence of corroborative evidence of other independent witnesses or cogent evidence on the plaintiff

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side regarding relation ship with one Ramaswamy Reddy and also the plaintiff has not approached the court with clean hands. Ultimately, the plaintiff has no right to claim over the property of deceased Ramaswamy Reddy unless proving of relationship between them. The plaintiff and defendants No.1 to 6 have colluded each other filed the present case in order to knock of suit property without relation ship and suit filed against other family members to allot ½ share over suit property as shown their ancestors. The consideration of attitude of plaintiff by filing this suit only for making unlawful gain. Thus, the plaintiff and defendants No.1 to 6 are not entitled for any relief of partition and separate possession with respect of suit property in the present suit. Hence, I answered to issue No.4 in the Negative.

23. Issue No.5: In view of my findings on issue No. 1 to 4, the suit of the plaintiff is liable to be dismissed. Accordingly I proceed to pass the following:

:: O R D E R ::

The suit of the plaintiff is hereby dismissed.

Parties to bear their own cost.

Draw decree accordingly.

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(Dictated to the stenographer directly on computer, corrected, signed by me & then pronounced in the open Court on this the 16th day of November - 2017)

(VINODKUMAR.M)
Civil Judge, Gudibanda

:: A N N E X U R E S ::

List of witnesses examined on behalf of plaintiff:

Pw.1:	Jayanthi
Pw.2:	Vinay
Pw.3:	Seenappa
Pw.4:	Venkatesh

List of documents marked for plaintiff:

Ex-P1:	GPA
Ex.P2:	G.tree
Ex.P3:	gift deed
Ex.P4&5:	sale deeds
Ex.P6:	E.C.
Ex.P7to11:	RTC extracts
Ex.P12:	Mutation
Ex.P113:	sale deed
Ex.P14:	Mutation
Ex.p15:	RTC extract
Ex.P16:	G.tree
Ex.P17:	RTC extract

List of witnesses examined on behalf of defendants:

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Dw.1: V.N.Krishnamurthy
Dw.2: Lakshminarayana
Dw.3: Krishnaiahshetty

List of documents marked for defendants:

Ex.D1 to 11: RTC extracts
Ex.D13: sale deed
Ex.D14: Mutation
Ex.D15: RTC extract
Ex.D16: Tax receipt
Ex.D17: death certificate

(VINODKUMAR.M.)

Civil Judge, Gudibande