

KACD510001442016



Presented on : 27-01-2016
Registered on : 27-01-2016
Decided on : 13-07-2022
Duration : 6 years, 5 months, 17 days

THE COURT OF PRINCIPAL CIVIL JUDGE AT HOSADURGA

PRESENTS

Sri. Shivaraju H.S.
B.A.Law. L.L.B.,
Prl.Civil Judge and J.M.F.C, Hosadurga

Original Suit No.37/2016

DATED THIS 13th DAY OF JULY 2022

PLAINTIFF :

Eshwaramma,
D/o Late.Channabasappa,
Aged about 50 years,
Occupation: Agriculturist,
R/o Chikkayagati village,
Kasaba hobli,
Hosadurga Taluk,
Now R/o Gollarahally village,
Ramagiri Hobli,
Holalkere Taluk

(By Sri.K.N.B, Advocate)

Versus

DEFENDANTS:

1) Rajappa,

S/o late Channabasappa,
Aged about 52 years,
Occupation: Agriculturist,
R/o Chikkayagati village,
Kasaba Hobli,
Hosadurga Taluk,

2) Umesha,
S/o Channabasappa,
Aged about 48 years,
Occupation: Agriculturist,
R/o Chikkayagati village,
Kasaba hobli,
Hosadurga Taluk,

3) Nanjundamma,
D/o late.Channabasappa,
W/o Channabasappa,
Aged about 55 years,
R/o Gollarahally camp,
Holalkere Taluk,
Chitradurga District,

4) Susheelamma,
D/o Late. Channabasappa,
W/o P.N.Rajappa,
Aged about 46 years,
R/o Talakatta village,
Ramagiri hobli,
Holalkere Taluk,
Chitradurga District.

5) Chandrika,
D/o late Channabasappa,
W/o Parameshwappa,
Aged about 40 years,
R/o Paledahally village,
Kasaba Hobli,
Hosadurga Taluk,

(By Sri.C.B., Adv. for D1)
(By Sri.A.U., Adv. for D-2 to D-5)

Date of Institution of the suit.	27.01.2016
Nature of the suit.	Declaration, Partition and Separate Possession and Permanent Injunction
Date of the commencement of recording of the evidence.	26.09.2016
Date on which the Judgment was pronounced.	13.04.2022
Total Duration	Year/s Month/s Day/s 06 05 16

(Shivaraju H.S.)
Prl. Civil Judge & JMFC,
Hosadurga.

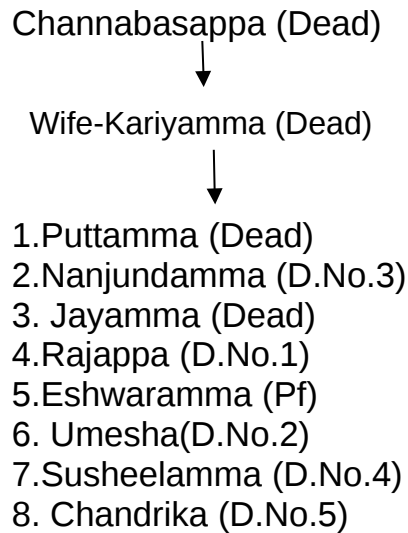
J U D G M E N T

The plaintiff has filed this suit against the defendants for the relief of declaration, partition and separate possession claiming her 1/6th share in the suit schedule properties by metes and bounds and also for the relief of permanent injunction.

2. Brief facts of the case are as under:

It is specific case of the plaintiff's that, she is unmarried daughter of main propositus. The defendant No.1 and 2 brothers, and defendant No.4 and 5 are her sisters. The propositus and her

wife Smt.Kariyamma died long back. The sisters namely Puttamma and Jayamma also died. The plaintiff and defendants are only successor of propositus and his wife. The parties to the suit are constituting the members of Hindu undivided joint family governed by mithakshara school of law. The genealogy of the parties referred in the plaint as follows:



3. It is also case of the plaintiff's that, the properties shown in the plaint schedule as follows:

SCHEDULE

Item No.	Survey/Property Numbers.	Measurement	Village
1.	35/4P1	1 acre 4 guntas	Chikkayagati village
2.	35/5P1	1 acre 38 guntas	Chikkayagati village
3.	79/3	0 acre 20 guntas	Chikkayagati village

4.	109/2B	0 acre 22 guntas	Chikkayagati village
5.	80/4	2 acre 25 guntas	Chikkayagati village
6.	80/5	0 acre 22 guntas	Chikkayagati village
7.	114/2	0 acre 20 00 guntas	Chikkayagati village
8.	108/1B	1 acre 09 guntas	Chikkayagati village
9.	80/1B	1 acre 28 guntas	Chikkayagati village
10.	90/2	1 acre 25 guntas	Chikkayagati village
11.	33/P4	1 acre 11 guntas	Chikkayagati village
12.	49/2B	0.38 guntas	Chikkayagati village
13.	44/1B	1 acre	Chikkayagati village
14.	44/1C	0.25 guntas	Chikkayagati village
15.	51/1B	1 acre 11 guntas	Chikkayagati village
16.	266	48 X 29 feet	Chikkayagati village
17.	37	21 X 38 feet	Chikkayagati village

are ancestral joint family properties of parties to the suit. The katha of the suit item No.1, 2 and 16 are in the name of propositus, the records of item No.3 to 10 and 17 are in the name of defendant No.1, the records of item No.11 to 15 are in the name of defendant No.2. But, the parties to the suit are in joint possession and enjoyment of the suit properties. The said properties are their ancestral joint family properties. The said properties are subject matter of the suit herein after referred as “**suit properties**”.

4. It is further case of the plaintiff's that, the defendants absolutely have no independent and exclusive right over the suit properties. The defendant No.1 by taking undue advantage of the records of suit properties are in his name mismanaged the properties and not kept proper accounts and management of the same. He also by taking undue advantage of temporary absence of the plaintiff and her unmarried, illegally created bogus documents in his favour in collusion with other defendants and trying to create some more documents to alienate the suit properties with an intention to defeat the legitimate share of the plaintiff. The plaintiff approached the defendants and requested her $1/6^{\text{th}}$ share in the suit properties by metes and bounds. But, the defendants refused to provide share. Hence, in the 3rd week of January 2016, when the defendants refused to provide share to the plaintiff, cause of action arose to file this suit. Therefore, the plaintiff has constrained to file suit against the defendants for the relief of declaration to declare that, suit properties are ancestral joint family properties of herself and defendants and also for partition and separate possession claiming her $1/6^{\text{th}}$ share in the suit properties by metes and bounds and also for consequential

relief of permanent injunction restraining the defendants, their men, agents, servants etc., from alienation of suit properties.

5. After service of summons, defendants have appeared before the court through their counsel. The defendant No.1 has filed written statement. That, the remaining defendants have not filed any written statement.

6. That, defendant No.1 in his written statement contended that, the genealogy is incomplete, the plaintiff has not arrayed successors of Jayamma W/o Dodda Basappa. That, one Mr.Kumarappa is successor of deceased Jayamma, who is residing at Chikkayagati village, the plaintiff also not arrayed successors of deceased Puttamma. As such, suit of the plaintiff is bad for non-joinder of necessary parties. The relationship of the parties to the suit are admitted, death of propositus and his wife also admitted, death of Puttamma and Jayamma also admitted. But, the status of the parties to the suit as joint family members is specifically denied, 1/6th share of the plaintiff over the suit schedule properties also denied in toto.

7. It is specifically contended under the heading of real facts of the case that, propositus died one year back and his wife died about one and half year back. That, the item No.1, 4, 7 to 15 and 17 are ancestral joint family properties of propositus and parties to the suit. The propositus during his lifetime married all his daughters namely Puttamma, Nanjundamma, Jayamma, Susheelamma and Chandrika. The first daughter Puttamma married with Channabasappa of Gollarahally village, she died and she had one daughter namely Latha and son namely Lokesh, the second daughter Nanjundamma also married with Channabasappa. She died about 20 years back. The plaintiff residing at Gollarahally village, with said Channabasappa without the consent of her parents. Thereafter, daughter namely Jayamma married with Doddabasappa, she also dead, but one Kumarappa is surviving successor of said Jayamma, another daughter i.e., defendant No.4 married in the year 1988 with Rajappa, another daughter i.e., defendant No.5 also married about 25 years back. Ever since the date of marriage of the daughters are residing with their husband's house. The propositus and his wife alongwith sons

enjoyed the properties till 1988, during the life time of propositus divided the family properties through unregistered partition deed dated 10.12.1988. Under the said partition, item No.1 allotted to the propositus. After the partition, propositus purchased item No.2 from one Bommanahally Hanumanthappa. Item No.3 was purchased by defendant No.1 in the year 2011, item No.16 also self acquired property of defendant No.1, acquired through Mallappanahally Mandala Panchayath very long back. Item No.5 and 6 purchased by defendant No.1 from Meenakshamma in the year 2011. As per partition deed dated 10.12.1988, item No.4, 7 to 10 allotted to the defendant No.1. Item No.11 to 15 allotted to the share of defendant No.2. Item No.17 left to the propositus and second defendant. As per the said partition, shares have been allotted to the defendant No.2 also. And name was mutated as per M.R.No.4/89-90. Thereafter, defendant No.1 has been in possession and enjoyment of the properties allotted to him. The said facts are well known to the plaintiff. In spite of such, the plaintiff has filed this false suit just to harass the defendants. Hence, it is prayed to dismiss the suit with cost.

8. On the basis of rival contentions of the parties, my predecessor-in-office has framed following :

ISSUES

1. Whether the plaintiff proves that, she and the defendants constitutes Hindu Undivided Joint Family?
 2. Whether the plaintiff proves that, suit schedule properties are the joint family properties as alleged ?
 3. Whether the plaintiff entitled to the relief of partition? And if so, what share is she entitled to ?
 4. Whether the defendant No.1 prove that, suit schedule item No.2, 3, 5, 6 and 16 properties are his self-acquired properties ?
 5. Whether the defendant No.1 proves earlier partition as contended in his written statement ?
 6. What order/decreree?
9. In order to prove the case, the plaintiff herself examined as PW-1. In the examination-in-chief, PW-1 has filed affidavit in

consonance with the plaint averments, RTC extract for the year 2015-16 in respect of suit schedule property bearing Sy.No.35/4P1 measuring 1 acre 04 guntas situated at Chikkayagati village of Hosadurga Taluk marked as per Ex.P-1, RTC extract for the year 2015-2016 in respect of suit schedule property bearing Sy.No.35/5P1 measuring 1 acre 38 guntas situated at Chikkayagati village of Hosadurga Taluk marked as per Ex.P-2, RTC extract for the year 2015-2016 in respect of suit schedule property bearing Sy.No.79/3 measuring 0.20 guntas situated at Chikkayagati village of Hosadurga Taluk marked as per Ex.P-3, RTC extract for the year 2015-2016 in respect of suit schedule property bearing Sy.No.109/2B measuring 0.22 guntas situated at Chikkayagati village of Hosadurga Taluk marked as per Ex.P-4, RTC extract for the year 2015-2016 in respect of suit schedule property bearing Sy.No.80/4 measuring 0.25 guntas situated at Chikkayagati village of Hosadurga Taluk marked as per Ex.P-5, RTC extract for the year 2015-2016 in respect of suit schedule property bearing Sy.No.80/5 measuring 0.22 guntas situated at Chikkayagati village of Hosadurga Taluk marked as per Ex.P-6, RTC extract for the year 2015-2016 in respect of suit schedule

property bearing Sy.No.114/2 measuring 0.20 guntas situated at Chikkayagati village of Hosadurga Taluk marked as per Ex.P-7, RTC extract for the year 2015-2016 in respect of suit schedule property bearing Sy.No.108/1B measuring 1 acre 09 guntas situated at Chikkayagati village of Hosadurga Taluk marked as per Ex.P-8, RTC extract for the year 2015-2016 in respect of suit schedule property bearing Sy.No.80/1B measuring 1 acre 28 guntas situated at Chikkayagati village of Hosadurga Taluk marked as per Ex.P-9, RTC extract for the year 2015-2016 in respect of suit schedule property bearing Sy.No.90/2 measuring 1 acre 25 guntas situated at Chikkayagati village of Hosadurga Taluk marked as per Ex.P-10, RTC extract for the year 2015-2016 in respect of suit schedule property bearing Sy.No.33/P4 measuring 1 acre 11 guntas situated at Chikkayagati village of Hosadurga Taluk marked as per Ex.P-11, RTC extract for the year 2015-2016 in respect of suit schedule property bearing Sy.No.49/2B measuring 0.38 guntas situated at Chikkayagati village of Hosadurga Taluk marked as per Ex.P-12, RTC extract for the year 2015-2016 in respect of suit schedule property bearing Sy.No.44/1B measuring 1 acre situated at Chikkayagati village of Hosadurga Taluk marked as per

Ex.P-13, RTC extract for the year 2015-2016 in respect of suit schedule property bearing Sy.No.44/1C measuring 0.25 guntas situated at Chikkayagati village of Hosadurga Taluk marked as per Ex.P-14, RTC extract for the year 2015-2016 in respect of suit schedule property bearing Sy.No.51/1B measuring 1 acre 11 guntas situated at Chikkayagati village of Hosadurga Taluk marked as per Ex.P-15, Grama panchayathi house list extracts are marked as per Ex.P-16 and Ex.P-17 respectively.

10. On behalf of plaintiff, two more witnesses examined as PW-2 and PW-3. In the examination-in-chief, PW-2 and 3 have filed affidavit in consonance with the plaint averments. No documents were marked through P.W-2 and P.W-3.

11. On the other hand, defendant No.1 in order to substantiate his pleadings himself examined as DW-1. In the examination-in-chief, DW-1 has filed affidavit in consonance with the written statement averments, Unregistered partition deed (ಪಾಲು ಪಾರೀಕಟ್ಟು) is marked as per Ex.D-1, Sale deeds are marked as per Ex.D-2 and Ex.D-3, Will dated 14.06.2004 is marked as per Ex.D-4, EC

marked as per Ex.D5, RTC extract for the year 2015-2016 in respect of suit schedule property bearing Sy.No.79/3 measuring 0.20 guntas situated at Chikkayagati village of Hosadurga Taluk marked as per Ex.D-6, RTC extract in respect of suit schedule property bearing Sy.No.19/2B measuring 0.22 guntas situated at Chikkayagati village of Hosadurga Taluk marked as per Ex.D-7, RTC extract for the year 2015-2016 in respect of suit schedule property bearing Sy.No.109/2B measuring 0.20 guntas situated at Chikkayagati village of Hosadurga Taluk marked as per Ex.D-8, RTC extract for the year 2015-2016 in respect of suit schedule property bearing Sy.No.80/4 measuring 0.25 guntas situated at Chikkayagati village of Hosadurga Taluk marked as per Ex.D-9, RTC extract for the year 2015-2016 in respect of suit schedule property bearing Sy.No.80/5 measuring 0.22 guntas situated at Chikkayagati village of Hosadurga Taluk marked as per Ex.D10, RTC extract in respect of suit schedule property bearing Sy.No.114/2 measuring 0.20 guntas situated at Chikkayagati village of Hosadurga Taluk marked as per Ex.D11, RTC extract for the year 2015-2016 in respect of suit schedule property bearing Sy.No.114/2 measuring 0.20 guntas situated at Chikkayagati

village of Hosadurga Taluk marked as per Ex.D12, RTC extract in respect of suit schedule property bearing Sy.No.108/1B measuring 1 acre 9 guntas situated at Chikkayagati village of Hosadurga Taluk marked as per Ex.D13, RTC extract for the year 2015-2016 in respect of suit schedule property bearing Sy.No.108/1B measuring 1 acre 9 guntas situated at Chikkayagati village of Hosadurga Taluk marked as per Ex.D14, RTC extract in respect of suit schedule property bearing Sy.No.80/1B measuring 1 acre 28 guntas situated at Chikkayagati village of Hosadurga Taluk marked as per Ex.15, RTC extract for the year 2015-2016 in respect of suit schedule property bearing Sy.No.80/1B measuring 0.28 guntas situated at Chikkayagati village of Hosadurga Taluk marked as per Ex.D16, RTC extract for the year 2015-2016 in respect of suit schedule property bearing Sy.No.90/2 measuring 1 acre 25 guntas situated at Chikkayagati village of Hosadurga Taluk marked as per Ex.D17, RTC extract for the year 1995-96 in respect of suit schedule property bearing Sy.No.33/P2 measuring 1 acre 11 guntas situated at Chikkayagati village of Hosadurga Taluk marked as per Ex.D18, RTC extract for the year 1995-96 in respect of suit schedule property bearing Sy.No.49/2PB measuring 0.38 guntas

situated at Chikkayagati village of Hosadurga Taluk marked as per Ex.D19, RTC extract for the year 1995-96 in respect of suit schedule property bearing Sy.No.44/1PB measuring 1 acre 21 guntas situated at Chikkayagati village of Hosadurga Taluk marked as per Ex.D20, RTC extract for the year 1995-96 in respect of suit schedule property bearing Sy.No.44/1C measuring 0.25 guntas situated at Chikkayagati village of Hosadurga Taluk marked as per Ex.D21, RTC extract in respect of suit schedule property bearing Sy.No.51/1B measuring 1 acre 11 guntas situated at Chikkayagati village of Hosadurga Taluk marked as per Ex.D22, RTC extract in respect of suit schedule property bearing Sy.No.51/1B measuring 1 acre 11 guntas situated at Chikkayagati village of Hosadurga Taluk marked as per Ex.D23, Death ceremony card is marked as per Ex.D24.

12. On behalf of defendant No.1 five more witnesses have been examined as DW-2 to DW-6. In the examination-in-chief, DW-2 to DW-6 have filed affidavits in consonance with the written statement averments. No documents were marked through D.W-2 to D.W-6.

13. The documents relied upon by the parties are given in the annexure of this Judgment.

14. Heard the arguments of both side at length and perused the entire materials placed on record.

15. My findings to the above Issues are as under:

Issue No.1 : In the Affirmative.

Issue No.2 : In the Affirmative.

Issue No.3 : In the Affirmative.

Issue No.4 : Partly in the Affirmative.

Issue No.5 : In the Negative.

Issue No.6 : As per final order for the following:

REASONS

16. **Issue Nos.1, 2 and 5:-** Since these issues pertaining to facts of status of joint family, ancestral joint family of parties to the suit and plea of earlier partition raised by the defendant No.1 are interlinked with each other taken up together for common discussion in order to avoid repetition of facts.

17. It is specific allegation of the plaintiff's that, she and defendants are successor of propositus and his wife. That, another two daughters of propositus namely Puttamma and Jayamma are dead. The parties to the suit are constituting members of Hindu undivided joint family governed by mithakshara school of law. The suit properties are their ancestral joint family properties, in which they are in joint possession and enjoyment. The plaintiff has got 1/6th share in the suit properties by metes and bounds. But, the defendants colluding with each other created false and bogus documents and refused to provide share to the plaintiff. Hence, this suit.

18. On the other hand defendant No.1 seriously contended that, on 10.12.1988 there was an partition/family arrangement in between propositus, defendant No.1 and 2. Under the said family arrangement, partition was affected through unregistered partition deed dated 10.12.1988. As per the said partition, item No.1 was allotted to the propositus, item No.17 was kept for propositus and defendant No.2, item No.4, 7 to 10 allotted to defendant No.1, item

No.11 to 15 allotted to defendant No.2. Therefore, the plaintiff is not entitled to the relief of partition.

19. In the case on hand, the plaintiff in support of her case herself deposed before the court as PW-1. During her cross-examination nothing worthwhile elicited from her mouth. That, number of suggestions were put to PW-1 that already there was a partition in the family way back in the year 1988. As such, the parties to the suit are not remained as members of Hindu undivided joint family, the suit properties are not available for the partition. But, the said suggestions were categorically denied by PW-1. Thus, it becomes clear that nothing worth elicited from her to say that, as of now, parties to the suit are not constituting members of Hindu undivided joint family and there was already partition held in the family under unregistered partition deed dated 10.12.1988.

20. Further, from the mouth of PW-2 and PW-3 also nothing worth elicited to disbelieve the case of the plaintiff. Even, in their cross-examination also it was suggested to them about earlier

partition, but they have empathetically denied the said suggestions. As such, the said suggestions made by the defendants remains as suggestions only nothing more than that.

21. Now, coming to the documentary evidence of the plaintiff. The plaintiff has produced property extracts of suit properties. That, item No.1, 2 and 17 are in the name of propositus. Item No.3 to 10 and 16 are in the name of defendant No.1. Item No.11 to 15 are in the name of defendant No.2. So, it is clear that, the suit properties are in the name of propositus, defendant No.1 and 2 as per partition and as per M.R.No.4/89-90. Whether, mere records of the properties are standing in the name of particular members of a joint family itself is sufficient to conclude that there was a partition in the family by metes and bounds or not is to be considered.

22. In this regard, admittedly, on the other hand the defendant No.1 examined as DW-1, in his cross-examination, he admitted the relationship of parties to the suit and status of joint family. The relevant portion of cross examination of DW-1 referred as follows:

"ವಾದಿ ಈಶ್ವರವು ನನ್ನ ತಂಗಿ. 2 ನೇ ಪ್ರತಿವಾದಿ ನನ್ನ ತಮ್ಮ ಎಂದರೆ ಸರಿ. 3 ರಿಂದ 5 ನೇ ಪ್ರತಿವಾದಿಯರು ನನ್ನ ತಂಗಿ ಎಂದರೆ ಸರಿ. ನಾವುಗಳು ಒಟ್ಟು ಕುಟುಂಬಕ್ಕೆ ಸೇರಿದ ಸದಸ್ಯರು ಎಂದರೆ ಸರಿ. ವಾದಿ ಈಶ್ವರವು ರವರಿಗೆ ಮದುವೆಯಾಗಿಲ್ಲ ಎಂದರೆ ಸರಿಯಲ್ಲ. ಈಶ್ವರವುನ ಗಂಡನ ಹೆಸರು ಚೆನ್ನಬಸಪ್ಪ. ನಮ್ಮ ತಂದೆಯ ಹೆಸರು ಚೆನ್ನಬಸಪ್ಪ ಎಂದರೆ ಸರಿ. ದಾವಾ ಸ್ವತ್ತುಗಳೆಲ್ಲ ನಮ್ಮ ಅವಿಭಕ್ತ ಕುಟುಂಬದ ಸ್ವತ್ತುಗಳು ಎಂದರೆ ಸರಿ."

23. So, upon considering the above referred admissions of defendant No.1, it is clear that the relationship between the parties to the suit and their status as members of a joint family is admitted by the defendant No.1. Even, the said fact is not seriously disputed by the defendant No.1. Thus, its become clear that, the parties to the suit are constituting members of Hindu undivided joint family and suit properties are their joint family properties.

24. But, it is serious contention of the defendant No.1 that, already partition was effect under unregistered partition deed dated 10.12.1988. Therefore, the plaintiff is not entitled to the relief

of partition. The defendant No.1 has also produced so called unregistered partition deed dated 10.12.1988 marked as per Ex.D-1 and defendant No.1 also examined witnesses as DW-2 to DW-6.

25. The said witnesses in their examination-in-chief deposed regarding earlier partition as per Ex.D-1. But, in their cross-examination elicited contrary from their mouth to the said plea of earlier partition. As such, this court is of the opinion that, it is important to refer the relevant portion of cross-examination of DW-2. The relevant portion of cross examination of DW-2 referred as follows:

"ವಾದಿ ಮತ್ತು ಪ್ರತಿವಾದಿಯರು ನನಗೆ ಗೊತ್ತು. ವಾದಿ ಮತ್ತು ಪ್ರತಿವಾದಿಯರು ಒಂದೇ ಕುಟುಂಬದವರು ಎಂದರೆ ಸರಿ. ದಾವ ಸ್ವತ್ತುಗಳು ವಾದಿ ಮತ್ತು ಪ್ರತಿವಾದಿಯರ ಕುಟುಂಬಕ್ಕೆ ಸೇರಿದ ಸ್ವತ್ತುಗಳು ಎಂದರೆ ಸರಿ. ಸಾಕ್ಷಿಯು ಮುಂದುವರೆದು ಭಾಗ ಆಗಿದೆ ಎಂದು ನುಡಿಯುತ್ತಾರೆ. ಪಾಲು ವಿಭಾಗದಲ್ಲಿ ಯಾರ ಪಾಲಿಗೆ ಯಾವ ಸ್ವತ್ತು ಹೋಗಿತ್ತದೆ ಎಂದು ನನಗೆ ಹೇಳಲು ಆಗುವುದಿಲ್ಲ.

ವಾದಿಯ ಮದುವೆ ಆಗಿಲ್ಲ ಎಂದರೆ ಸರಿ. ದಾವಾ ಸ್ವತ್ತುಗಳಲ್ಲಿ ವಾದಿಗೆ ಹಕ್ಕು ಅಧಿಕಾರ ಇರುತ್ತದೆ ಎಂದರೆ ಸರಿಯಲ್ಲ. ಪಾಲುವಿಭಾಗ ಮಾಡಿದಾಗ ನನ್ನ ಸಮಕ್ಷಮ ಯಾವುದೇ ಬರವಣಿಗೆ ಮಾಡಿರಲಿಲ್ಲ. ಪಾಲುವಿಭಾಗ ಮಾಡಿದಾಗ ವಾದಿ ಈಶ್ವರವು ಹಾಜರಿರಲಿಲ್ಲ. ವಾದಿಯ ತಂದೆ ಮೃತಪಟ್ಟಾಗ ಆತನ ಉತ್ತರಾಧಿಕಾರಿಗಳನ್ನು ವಾದಿ ಮತ್ತು ಪ್ರತಿವಾದಿಯರು ಒಟ್ಟಾಗಿ ಮಾಡಿದ್ದರು ಎಂದರೆ ಸರಿಯಲ್ಲ. 3, 5 ಮತ್ತು 6 ನೇ ದಾವಾ ಸ್ವತ್ತುಗಳನ್ನು 8 ವರ್ಷಗಳ ಹಿಂದೆ ಮಹಲಿಂಗಪ್ಪ ಮತ್ತು ಮೀನಾಕ್ಷಮ್ಮರವರಿಂದ ಪ್ರತಿವಾದಿಯರು ಖರೀದಿಸಿದಾಗ ನಾನು ಹಾಜರಿರಲಿಲ್ಲ. ”

26. So, upon considering the contrary version of DW-2, it is clear that the oral evidence of DW-1 and DW-2 is no way helpful to the defendant No.1 in establishing his plea of earlier partition as per Ex.D-1 as contended in his written statement.

27. Now, harking back to the unregistered partition deed marked as per marked as per Ex.D-1. So far as concern to the said document it is essential to note here that, whether unregistered partition deed marked as per Ex.D-1 is helpful to the contention of the defendant No.1 or not is to be considered. In this regard, it is

relevant to note here itself that, it is settled position of law that, in view of provisions of Registration Act, if the partition is taking place on the document itself, then in such cases, the registration of such partition deed is compulsory. If at all the parties recording the earlier partition through document or reporting earlier partition through memorandum of partition or partition agreement etc., such partition deed need not be compulsory registration.

28. So, taking note of this position of law, let me consider the unregistered partition deed marked as per Ex.D-1. The recitals of partition deed marked as per Ex.D-1 makes very clear that, on 10.12.1988 itself the parties have effected partition under the said deed. In this regard it very important to refer the relevant portion of partition deed and the relevant lines of Ex.D-1 are extracted as follows:-

“ನಾವುಗಳು ಇದುವರೆವಿಗೂ ಏಕ ಕುಟುಂಬದಲ್ಲಿ ವಾಸವಾಗಿದ್ದು,
ಒಟ್ಟು ಕುಟುಂಬದ ಆಸ್ತಿಗಳನ್ನು ಅನುಭವಿಸಿಕೊಂಡು
ಬರುತ್ತಿರುತ್ತೇವೆ. ಆದರೆ, ಇತ್ತೀಚೆಗೆ ನಮಗೂ, ನಿಮಗೂ
ಮನೆತನದ ವ್ಯವಹಾರದ ವಿಚಾರದಲ್ಲಿ ಒಬ್ಬರಿಗೊಬ್ಬರಿಗೆ ಸರಿಬಾರದೇ
ಇದ್ದುದರಿಂದ, ನಾವುಗಳು ಒಟ್ಟು ಕುಟುಂಬದಲ್ಲಿದ್ದುಕೊಂಡು,

ಒಟ್ಟು ಕುಟುಂಬದ ಆಸ್ತಿಗಳನ್ನು ಒಟ್ಟಿಗೆ ಅನುಭವಿಸಲು ಸಾಧ್ಯವಾಗದೇ ಇರುವುದರಿಂದ, ಈ ದಿವಸ ನಾವುಗಳು ನಮ್ಮ ನಮ್ಮ ಭಾಗದ ಆಸ್ತಿಗಳನ್ನು ಭಾಗಮಾಡಿಕೊಂಡು, ಅಲಾಯಿದೇ ಅನುಭವಿಸಿಕೊಂಡು ಬರಲು ಇಷ್ಟಪಟ್ಟಿದ್ದರಿಂದ, ನಮ್ಮ ಒಟ್ಟು ಕುಟುಂಬದ ವಿಶಿಷ್ಟ ಆಸ್ತಿಗಳನ್ನು ವಿಭಾಗ ಮಾಡಿಕೊಂಡು, ಈ ದಿವಸ ನಮ್ಮ ನಮ್ಮಗಳ ಸ್ವಾಧೀನಕ್ಕೆ ತೆಗೆದುಕೊಂಡಿರುತ್ತೇವೆ. ಇನ್ನು ಮುಂದೆ ನಮ್ಮ ನಮ್ಮಗಳಿಗೆ ಇಷ್ಟಾಚಾರವೇ ಹೊರತು, ಲೆಕ್ಕಾಚಾರವೇನೊಂದೂ ಇರುವುದಿಲ್ಲ.”

29. So, from the above referred recitals of Ex.D-1, it is clear that, the document marked as per Ex.D-1 is not an memorandum of partition, it is partition deed and partition was affected on the document itself, so it requires compulsory registration under the provisions of Registration Act. But, it is not registered. However, for a moment, its reregistration or non registration may be not a matter here. But, the validity of partition is based on Ex.D-1 itself. Therefore, its registration matters a lot in adjudicating the plea of earlier partition. Such being the case, it cannot be concluded that there was a valid partition under Ex.D-1 as contended by the

defendant No.1. And as per the said document there was no valid and complete partition by metes and bounds at all.

30. Furthermore, as per Ex.D-1, partition was effected only in between propositus, defendant No.1 and 2. It does not speak anything about allotment of shares to the defendant No.3,5, deceased Puttamma and Jayamma or their successors, if they were dead at the time of Ex.D-1. So, at the very out set partition deed marked as per Ex.D-1 speaks about partition only in between propositus and his sons i.e., defendant No.1 and 2 and it does not speak anything about shares allotted to the daughters etc., So, again it is an incomplete partition or partial partition. As such, solely based on records of right standing in the name of propositus, defendant No.1 and 2 as per M.R.No.4/89-90, unregistered and incomplete partition effected through Ex.D-1, absolutely, it cannot be concluded that there was an earlier partition by metes and bounds in the family as per Ex.D-1. So viewing from any angle there is no material evidence to hold that defendant No.1 has proved earlier partition as contended.

31. Further, it is relevant to note that, knowingly or unknowingly unregistered partition deed dated 10.12.1988 is marked as per Ex.D-1. The said partition deed is not registered and engraved on 3 rupees stamp paper. The recitals of ExD-1 makes very very clear that, it is not memorandum of partition, which speaks about partition was affected earlier to the document. But, the partition was affected and properties were divided based on the said document. Therefore, Ex.D-1 is not memorandum of partition, it is a partition deed which requires compulsory registration as per section 17 of Registration Act and proper Stamp duty has to be paid on the same.

32. That, maximum proper stamp duty for partition deed is 250 Rupees. Ex.D-1 is engraved on 3 Rupees stamp papers. So, the said document is insufficiently stamped. The deficit stamp duty of is Rs.247 and ten times penalty is to be paid by the plaintiff. The document is already admitted and marked in the evidence though it is not duly stamped. So, whether such document can be impounded or not also is to be looked in to.

33. In view of the same, it is worthy to note the provisions of section 58 of Karnataka stamp Act,1957 which reads as follows:

section 58 : Revision of certain decisions of courts regarding the sufficiency of stamps (1) *When any Court in the exercise of its Civil or Revenue jurisdiction or any Criminal Court in any proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898, makes any order admitting any instrument in evidence as duly stamped or as not requiring a stamp, or upon payment of duty and a penalty under section 34, the Court to which appeals lie from, or references are made by, such first mentioned Court may, of its own motion or on the application of the [1] [Deputy Commissioner], take such order into consideration.*

2) If such Court, after such consideration, is of opinion that such instrument should not have been admitted in evidence without the payment of duty and penalty under section 34, or without the payment of a higher duty and penalty than those paid, it may record a declaration to that effect, and determine the amount of duty with which such instrument is chargeable, and may require any person in whose possession or power such instrument then is, to produce the same, and may impound the same when produced.

(3) When any declaration has been recorded under sub-section (2), the Court recording the same shall send a copy thereof to the [1] [Deputy Commissioner] and, where the instrument to which it relates has been

impounded or is otherwise in the possession of such Court, shall also send him such instrument.

(4) The [1] [Deputy Commissioner] may thereupon, notwithstanding anything contained in the order admitting such instrument in evidence, or in any certificate granted under section 41, or in section 42, prosecute any person for any offence against the stamp-law which the [1] [Deputy Commissioner] considers him to have committed in respect of such instrument:

Provided that,-

(a) no such prosecution shall be instituted where the amount (including duty and penalty) which, according to the determination of such Court, was payable in respect of the instrument under section 34, is paid to the [1] [Deputy Commissioner] unless he thinks that the offence was committed with an intention of evading payment of the proper duty;

(b) except for the purpose of such prosecution, no declaration made under this section shall affect the validity of any order admitting any instrument in evidence, or of any certificate granted under section

34. So, as per the provisions of Section 58(1) that, court admitted any instrument in the evident as duly stamped may of its own

motion or on the application of deputy commissioner take such order into consideration. And as per Section 58(2), the court after such consideration came to the conclusion that, such document or instrument should not have been admitted in the evidence that too, without payment of duty penalty under section 34, which has got discretionary power to impound the same and to send the copy of such declaration or order alongwith such instrument to deputy commissioner to deal with the matter in accordance with law.

35. In the case on hand, unregistered and insufficiently stamped partition deed dated 10.12.1988 is marked as per Ex.D-1 and not noticed by the court that, the said document is insufficiently stamped.

36. Therefore, deficit stamp duty of Rs.247 and 10 times penalty has to be paid by the plaintiff. The said calculation works out as follows. The plaintiff is to pay Rs.250/- of stamp duty on partition deed, since partition deed is engraved on Rs.3/- bond papers same is to be deducted, which works out $\text{Rs.250} - \text{Rs.3} = \text{Rs.247/-}$. Therefore, the plaintiff is to pay Rs.247/- stamp duty and 10 times

penalty, which works out Rs.247x10 =Rs.2,470/-. Hence, plaintiff is to pay Rs.2,470/- + Rs.247/- = Rs.2,717/-. Therefore, the partition deed dated 10.12.1988 marked as per Ex.D-1 is impounded. On payment of deficit stamp duty and on reporting the same to the deputy commissioner, the plaintiff is entitled to obtain original document or certified copies of the same, failing which he is not entitled to receive original nor certified copies.

37. Upon considering all these facts and circumstances of the case, it is clear that, the records are in the name of the propositus, defendant No.1 and 2, there is no clenching and clear evidence before court to hold that, there was a partition by metes and bounds in the family under Ex.D-1, no shares have been allotted to the daughters of propositus.

38. Therefore, it is clear that the parties to the suit are still constituting members of Hindu joint family governed by mithakshara school of law. The suit properties are their ancestral joint family properties.

39. On the other hand, defendant No.1 miserably failed to prove the plea of earlier partition as contended in his written statement. Hence, it is proved by the plaintiff that herself and defendants are constituting members of Hindu Undivided joint family and suit properties are their ancestral joint family properties, in which they are in joint possession and enjoyment of the same. ***Hence, this court answered issue No.1 and 2 in the Affirmative and Issue No.5 in the Negative.***

40. **Issue No.4:-** As far as concern to this issue, it is serious contention of the defendant No.1 that, item No.3 was purchased in the year 2011 from Mahalingappa S/o Kundurugollarahatty, item No.5 and 6 are also purchased in the year 2011 from Meenakshamma of Hosadurga. Item No.4 and 7 to 10 fallen to his share under family partition deed dated 10.12.1988 and item No.6 was granted by Mahallapanahally Grama Panchayath. As such item No.3 to 10 and 16 are his self-acquired properties.

41. In support of said contention, the defendant No.1 has produced sale deed marked as per Ex.D-2 and 3. under which, defendant No.1 purchased item No.3, 5, 6 from Mahalingappa S/o Kundurugollarahatty and Meenakshamma W/o Nanjundappa for valid consideration. Admittedly, as per the recitals of said sale deed, defendant No.1 has purchased item No.3, 5 and 6 in his name. The plaintiff in her pleadings has not pleaded anything about the purchase of item No.3, 5 and 6, so as to whether said properties were purchased out of the joint family funds etc., So, at the very out of set without such pleadings it is unsafe to conclude that item No.3, 5 and 6 are purchased by the defendant No.1 out of joint family nucleus or purchased as joint family property in his name.

42. Admittedly, at the time of purchase of item No.3, 5 and 6 there was no family partition and parties were constituting members of joint family. The said fact itself is not a ground to hold that, item No.3, 5 and 6 are also joint family properties. Initial burden is on the plaintiff to prove that, the said properties are also purchased as joint family property out of joint family fund in the

name of defendant No.1. If plaintiff succeeded in establishing the same then onus shifts on the defendant No.1 to prove that there was a separate and self income, out of which only item No.3, 5 and 6 are purchased. Here, first of all there is no pleadings on behalf of the plaintiff to that effect. Therefore, blindly it cannot be concluded that item No.3, 5 and 6 are also ancestral joint family properties. Hence, it can be held that the item No.3, 5 and 6 are self acquired property of defendant No.1.

43. Now coming to the contention of the defendant No.1 that item No.4, 7 to 10 and 16 are also his self acquired properties, which were given to him under family partition effected through unregistered partition deed dated 10.12.1988. It is already concluded that, the partition deed dated 10.12.1988 is not valid partition and it is partial partition, it is not a partition held in between all the family members by metes and bounds. As such, allotment of item No.4 and 7 to 10 in favour of defendant No.1 and the said properties have become self acquired properties of defendant No.1 would become meaningless. As such, it cannot be

said that item No.4 and 7 to 10 are self acquired properties of defendant No.1.

44. Further, as for as concern to item No.16, it is contended by the defendant No.1 that the said property was acquired by him from Mallappanahally Grama Panchayath, which was granted in his favour. As such, the said property is his self acquired property. In this regard, it may be important to note that, in view of provisions of Karnataka Land Grant Rules Act 1969, generally grant means, grant in the name any male member of the family itself is not become his self acquired property. That, generally grant is for betterment of entire family. Therefore, merely grant of item No.16 in the name of defendant No.1 itself would not amount that the said property has become his self acquired property. There is no merits in holding such in favour of defendant No.1. Accordingly, the said contention does not holds and cannot be accepted. Therefore, in view of foregoing discussions and findings, it is clear that, the defendant No.1 has proved that item No.3, 5 and 6 only his self acquired properties and failed to prove that item No.4 and

7 to 10 and 16 are also his self acquired properties. ***Hence, this court answered issue No.4 partly in the Affirmative.***

45. **Issue No.3:-** As far as concern to this issue is concerned the plaintiff has claimed relief of declaration to declare that, the suit properties are her ancestral joint family properties alongwith defendants. In this regard, in view of detailed discussions and findings assigned on issue No.1, 2, 4 and 5 the plaintiff has successfully proved that, item No.1, 2, 4, 7 to 17 are her ancestral joint family properties alongwith defendants, in which they are in joint possession and enjoyment. The plaintiff has failed to prove that item No.3, 5 and 6 are also ancestral joint family properties per contra, the defendant No.1 successfully established that, item No.3, 5 and 6 are his self acquired properties. Therefore, the plaintiff is entitled to the relief of declaration only on item No.1, 2, 4, 7 to 17 and she is not entitled to relief of declaration over item No.3, 5 and 6.

46. The second relief is sought by the plaintiff is for partition and separate possession claiming 1/6th share in the suit schedule

properties by metes and bounds. In this regard, may be relevant to note that, the plaintiff is entitled to the relief of partition and separate possession over the item No.1, 4, 7 to 17. But, so far as concern to her share, it is relevant to note that the plaintiff has not arrayed the successors of deceased Puttamma and Jayamma. Their death and their successors is admitted by PW-1 herself during her cross-examination. The relevant portion of cross-examination of PW-1 referred as follows:

“ನನಗೆ ಪುಟ್ಟಮ್ಮ ಹಾಗೂ ಜಯಮ್ಮ ಎಂಬ ಇಬ್ಬರು
ಅಕ್ಕಂದಿರು ಇದ್ದರು ಎಂದರೆ ಸರಿ. ಅವರುಗಳು ಈಗ
ಮೃತಪಟ್ಟಿರುತ್ತಾರೆ. ಅವರುಗಳಿಗೆ ಸಂತಾನ ಇರುತ್ತದೆ
ಎಂದರೆ ಸರಿ. ಅವರೆಲ್ಲರೂ ವಯಸ್ಸು ಎಂದರೆ ಸರಿ.
ಅವರುಗಳನ್ನು ನಾನು ಈ ದಾವೆಯಲ್ಲಿ
ಪಕ್ಕಕಾರರನ್ನಾಗಿ ಮಾಡಿರುವುದಿಲ್ಲ ಎಂದರೆ ಸರಿ.”

47. So, the successors of Puttamma and Jayamma also being members of Hindu undivided joint family alongwith parties to the suit have got share in item No.1, 4, 7 to 17. Therefore, the said successors of Puttamma and Jayamma have also got equal share that of parties to the suit. So, under such circumstances the

plaintiff is not entitled to 1/6th share, but she is entitled to 1/8th share in item No.1, 2, 4, 7 to 17.

48. That, another relief sought by the plaintiff is consequential relief of permanent injunction restraining the defendants from alienation of the suit property. However, it is already concluded and decided that the suit of the plaintiff is entitled to be decreed only on item No.1, 2, 4, 7 to 17 and she has got 1/8th share in the said property by metes and bounds. As such, if defendants are not restrained and if they alienated the said properties definitely it would cause injustice to the plaintiff. Therefore, it is absolutely necessary to injunct the defendants from alienation of item No.1, 4, 7 to 17. However, since item No.3, 5 and 6 are self acquired properties of defendant No.1 the defendants cannot be restrained from alienation of the said properties. Accordingly, the plaintiff is not the entitled to the relief of permanent injunction in respect of item No.3, 5 and 6. ***Hence, this court answered issue No.3 Partly in the Affirmative.***

49. **Issue No.6:-** In view of findings and reasons assigned on Issue Nos.1 to 5, this court proceed to pass the following:

ORDERS

Suit of the plaintiff is hereby partly decreed in following terms.

It is hereby declared that, item No.1, 2, 4 and 7 to 17 are ancestral joint family properties of plaintiff and defendants.

It is also declared that, the plaintiff is entitled to the relief of partition and separate possession of 1/8th share in item No.1, 2, 4 and 7 to 17 by metes and bounds.

The relief of permanent injunction is granted infavour of plaintiff.

Consequently, the defendants, their men, agents, servants etc., are permanently restrained from alienation of item No.1,2,4 and 7 to 17 in whatsoever manner till division of the same by metes and bounds.

The relief of declaration, partition and permanent injunction pertaining to item No.3, 5, 6 and suit in respect of the same is hereby dismissed.

However, defendants being members of Hindu undivided joint family also have got $1/8^{\text{th}}$ share each in item No.1, 2, 4 and 7 to 17 by metes and bounds.

Even, successors of Puttamma have got $1/8^{\text{th}}$ share together and successors of Jayamma have got $1/8^{\text{th}}$ share together in item No.1, 2, 4 and 7 to 17 by metes and bounds.

In view of observation made in paragraphs No.31 to 36 in the body of this judgment, unregistered partition deed dated 10.12.1988 is impounded and defendant No.1 is directed to pay duty and penalty, from which he is entitled to receive the original or certified copies of the same.

No order as to costs.

Draw preliminary decree accordingly.

Further, in view of directions issued by Hon'ble Apex court in recent decision reported in ***Kattukandi Edathil Krishnan V/s Kattukandi Edathil Valsan reported in 2022 live law (SC) 547***, this court suo-motu listed the matter for taking steps under order 20 Rule 18 of CPC.

Accordingly, office is directed to list the matter/put up before open court after drawing up of preliminary decree on this file only.

(Dictated to the stenographer, transcribed by her, corrected by me, then pronounced in the open court on this the 13th day of JULY 2022)

(Shivaraju H.S.)
Prl. Civil Judge & JMFC,
Hosadurga.

ANNEXURES

List of Witnesses examined on behalf of Plaintiff:

P.W.1: Eshwaramma W/o Late.Channabasappa.

P.W.2: K.Omkarappa S/o Late.Kariyappa.

P.W.3: N.Puttaswamy S/o Nagappa.

List of Documents marked on behalf of Plaintiffs:

- Ex.P-1 : RTC extract of land bearing Sy.No.35/4P1.
Ex.P-2 : RTC extract of land bearing Sy.No.35/5P1.
Ex.P-3 : RTC extract of land bearing Sy.No.79/3.
Ex.P-4 : RTC extract of land bearing Sy.No.109/2B
Ex.P-5 : RTC extract of land bearing Sy.No. 80/4.
Ex.P-6 : RTC extract of land bearing Sy.No. 80/5
Ex.P-7 : RTC extract of land bearing Sy.No. 114/2
Ex.P-8 : RTC extract of land bearing Sy.No. 108/1B
Ex.P-9 : RTC extract of land bearing Sy.No. 80/1B
Ex.P-10 : RTC extract of land bearing Sy.No. 90/2
Ex.P-11 : RTC extract of land bearing Sy.No. 33/P4
Ex.P-12 : RTC extract of land bearing Sy.No. 49/2B
Ex.P-13 : RTC extract of land bearing Sy.No. .44/1B
Ex.P-14 : RTC extract of land bearing Sy.No. 44/1C
Ex.P-15 : RTC extract of land bearing Sy.No. 51/1B
Ex.P-16 &17 : Two encumbrance certificates.

List of Witnesses examined on behalf of defendants:

- D.W.1 : Rajappa S/o Channabasappa.
D.W.2 : B.S.Basavarajappa S/o Nagappa.
D.W.3 : G.Suresh S/o Gaviyappa.
D.W.4 : B.M.Basavarajappa S/o Mudalagiriappa.
D.W.5 : Bramhachari S/o Nageshachar.
D.W.6 : Prameela W/o Shankarappa.

List of Documents marked on behalf of defendant:

- Ex.D-1 : Unregistered partition deed
- Ex.D-2 & 3 : Two Sale deeds
- Ex.D-4 : Will deed.
- Ex.D-5 : encumbrance certificate
- Ex.D-6 : RTC extract of land bearing Sy.No. 79/3
- Ex.D-7 : RTC extract of land bearing Sy.No. 19/2B
- Ex.D-8 : RTC extract of land bearing Sy.No. 109/2B
- Ex.D-9 : RTC extract of land bearing Sy.No. 80/4
- Ex.D-10 : RTC extract of land bearing Sy.No. 80/5
- Ex.D-11 : RTC extract of land bearing Sy.No. 114/2
- Ex.D-12 : RTC extract of land bearing Sy.No. 114/2
- Ex.D-13 : RTC extract of land bearing Sy.No. 108/1B
- Ex.D-14 : RTC extract of land bearing Sy.No. 108/1B
- Ex.D-15 : RTC extract of land bearing Sy.No. 80/1B
- Ex.D-16 : RTC extract of land bearing Sy.No. 80/1B
- Ex.D-17 : RTC extract of land bearing Sy.No. 90/2
- Ex.D-18 : RTC extract of land bearing Sy.No. 33/P2
- Ex.D-19 : RTC extract of land bearing Sy.No. 49/2PB
- Ex.D-20 : RTC extract of land bearing Sy.No. 44/1PB
- Ex.D-21 : RTC extract of land bearing Sy.No. 44/1C
- Ex.D-22 : RTC extract of land bearing Sy.No. 51/1B
- Ex.D-23 : RTC extract of land bearing Sy.No. 51/1B
- Ex.D-24 : Death ceremony card.

(Shivaraju H.S.)
Prl. Civil Judge & JMFC,
Hosadurga.