

KACD510017912017



Presented on : 22-11-2017
Registered on : 22-11-2017
Decided on : 29-11-2023
Duration : 06 years, 8 months, 00 days

**IN THE COURT OF ADDL. CIVIL JUDGE AND J.M.F.C, AT
HOSADURGA**

PRESENTS

Sri. Shivaraju H.S.

B.A.Law. L.L.B.,

**C/C Addl.Civil Judge and J.M.F.C,
Hosadurga.**

Original Suit No.476/207

DATED THIS 29th DAY OF NOVEMBER-2023

PLAINTIFF:

Sri.Pathappa
S/o Late Ningappa,
Aged about 58 years,
Agriculturist,
Residence of Menasinodu
Gollarahati village,
Mathodu Hobli,
Hosadurga Taluk

(By Sri.D.N.M. Advocate)

Versus

DEFENDANTS:

1. Smt.Eramma
W/o Late Chikkanna D/o Late Ningappa,
Aged about 60 years,

2.Smt.Kariyamma
W/o Late Rangappa and D/o Ningappa,
Aged about 56 years,

3.Chikkanna
S/o Late Ningappa,
Aged about 54 years,

All are Agriculturists,
Residence of Menasinodu
Gollarahati village,
Mathodu Hobli,
Hosadurga Taluk

(D.1 and 2-Ex-Parte)
(By Sri.E.T.R Advocate for D3)

Date of Institution of the suit.	22.11.2017
Nature of the suit.	Partition and Separate Possession
Date of the commencement of recording of the evidence.	14.09.2021
Date on which the Judgment was pronounced.	29.11.2023

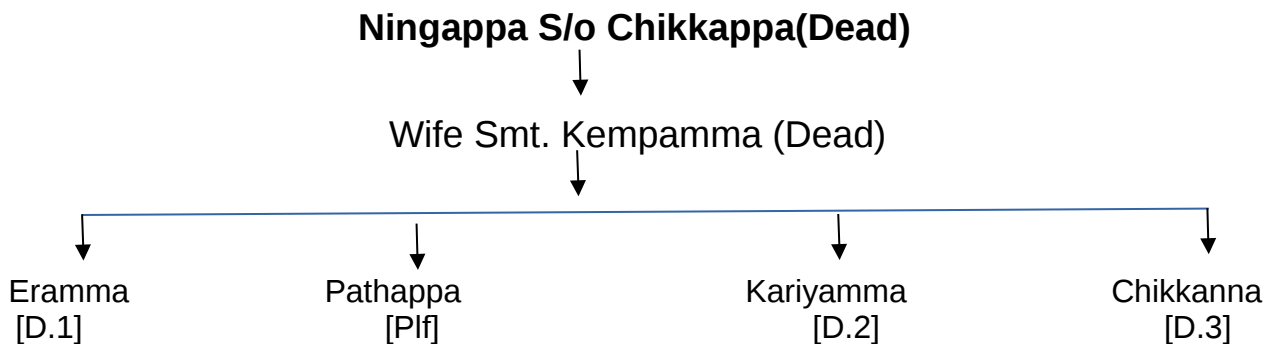
(SHIVARAJU H.S.)
C/C Addl. Civil Judge & JMFC.,
Hosadurga.

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 legitimate share in the suit schedule property by metes and bounds.

2. Brief facts of the case are as under:

It is specific case of the plaintiff's that, parties to the suit are constituting members of Hindu undivided joint family members. The genealogy of the parties as referred in the plaint as follows:



3. It is further case of the plaintiff's that, land bearing Re.sy.No.47 measuring 2 acres 28 guntas bounded towards East-Land of Kittajara Anjanappa, West- Land plaintiff Doddathimmaiaya, North-Land of Somanna, South-Land of Krishnamurthysituated at Memasinadu village, Mathodu Hobli, Hosadurga taluk is their ancestral and joint family property, in which they are in joint possession and enjoyment. The said property is subject the matter of the suit herein referred as "**suit property**".

4. It is further case of the plaintiff's that, defendants absolutely have no independent and exclusive right over the suit property. The

defendants by taking undue advantage of strained relationship denying the share of plaintiff. The plaintiff has got 1/4th share in the suit property by metes and bounds. But, the defendants denied the same. Hence, second week of November 2017, when the defendants have refused to provide share to the plaintiff, cause of action arose to file the suit. Therefore, the plaintiff has constrained to file suit against the defendants for the relief of partition and separate possession claiming 1/4th share in the suit property by metes and bounds.

5. After service of summons, defendant No.1 and 2 have appeared before the court through their counsel, but not filed written statement.

6. In spite of service of summons Defendant No.3 has not appeared before the court. Hence, they were placed Ex-Parte.

7. In order to prove the case, Plaintiff himself examined as P.W.1. In the examination-in-chief PW-1 filed affidavit in consonance with plaint averments by reiterating the plaint averments, Genealogy

marked as per Ex.P-1, RTC extract for the year 2017-18 in respect of land bearing Sy.No.47 measuring 2 acres 28 guntas situated at Menasinodu village made as per Ex.P-2.

8. The defendants have neither filed written statement nor adduced the any evidence.

9. Heard the arguments of counsel for plaintiff and perused entire materials placed on record.

10. Upon considering materials placed on record, the following Points that would arise for consideration:

POINTS

1. Whether the plaintiff is entitled to the reliefs as sought for ?

2. What Order or Decree ?

11. My findings to the above Points are as under:

Point No.1 : In the Affirmative.

Point No.2 : As per final order for the following :

REASONS

12. **Point No.1**:- Herein, it is specific case of the plaintiff's that, parties to the suit are constituting members of Hindu undivided joint family Governed by Mithakshara school of law. The suit property is their ancestral joint family property, in which they are in joint possession and enjoyment. The plaintiff has got 1/4th share in the suit property by metes and bounds. The defendants have refused to allot share to the plaintiff. Hence, this suit.

13. The defendants have not appeared before the court and not filed written statement and also not cross-examined P.W.1. Hence, oral and documentary evidence of Plaintiff remains unchallenged and un-impeached..

14. As for as concerned to the allegation of the plaintiff from the perusal of plaint avernments and genealogy marked as per Ex.P-1, it show the relationship of the parties to the suit. Further, from the perusal of RTC extracts of suit property marked as per Ex.P-2, it is crystal clear that, the suit property is ancestral and joint family property of parties to the suit. The said document and entries made

therein makes evident that the suit property is ancestral and joint family property of plaintiff and defendants.

15. That, suit summons issued to the defendants duly served, and they have appeared before the court through their counsel, but not opposed the claim. The defendants inspite of knowledge of pendency of the suit have not filed written statement by opposing claim of the plaintiff. Even, inspite of having knowledge of pendency of the suit they have not chosen to contest the case. Under such circumstances, adverse inference need to be drawn against the defendants.

16. Therefore, upon considering the facts and circumstances of the case the plaintiff has established that, himself and defendants are constituting members of Hindu undivided joint family. The suit property is their ancestral joint family property. Such being the case, the plaintiff has got 1/4th share in the suit property. Even, defendants have got 1/4th share each in suit property by metes and bounds. Therefore, the plaintiff is entitled to the relief of partition and

separate possession in the suit property by metes and bounds.

Hence, this court answered the point No.1 in the Affirmative.

17. **Point No.2**:- In view of findings on point No.1, this court proceed to pass the following :

ORDER

Suit of the plaintiff is hereby decreed in following terms.

It is declared that, the suit property is ancestral and joint family property of parties to the suit.

It is also declared that, the plaintiff is entitled to the relief of partition and separate possession of 1/4th share in the suit property by metes and bounds.

Further, the defendants have got 1/4th share each in suit property by metes and bounds.

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 29th day of November-2023)

(SHIVARAJU H.S.)
C/C Addl.Civil Judge & JMFC.,
Hosadurga.

ANNEXURES

List of Witnesses examined on behalf of Plaintiffs:

P.W.1 : Sri.Pathappa S/o Late Ningappa

List of Documents marked on behalf of Plaintiffs:

Ex.P-1 : Genealogy

Ex.P-2 : RTC extract in respect of land bearing Sy.No.47

List of Witnesses examined on behalf of Defendants:

--Nil--

List of Documents marked on behalf of Defendants:

--Nil--

(SHIVARAJU H.S.)
C/C Addl.Civil Judge & JMFC.,
Hosadurga.

