



**IN THE COURT OF THE PRL. CIVIL JUDGE &
J.M.F.C., KADUR**

Dated this the 31th day of October, 2022

Present

Sri. H.P. Mohan Kumar,
B.Sc, L.L.B.,
**Prl., Civil Judge and JMFC.,
Kadur.**

O.S. No. 333/2018

Plaintiffs: **Smt. Vasanthamma W/o Shivanna,**
Aged about 50 years, Housewife,
R/o Venkateshwara Colony,
Hondada Circle,
Kondajji Road, Davanagere Town.
(By Smt. B.R.R. Advocate)

V/s

Defendants: 1. **Smt. Hemavathi W/o Late Raganna,**
Aged about 70 years, Agriculturist,

2. **Sri. Prakash S/o Late Revanna,**
Aged about 45 years, Agriculturist,
Both are residing at Giriyapura
Village, Kadur Taluk,
Chikkamagalore District.

(Defendants by Sri.C.B. Advocate)

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JUDGMENT

The plaintiff has filed the suit against the defendants for the following reliefs:-

- a) For partition and Separate Possession of her 1/3rd share over the suit schedule properties,
- b) For such other reliefs which deems fit to grant under the circumstances of the case.

2. The case of the plaintiff in brief is as follows:

One Sri. Basappa is the prepositus of the family. Revanna is the son of said Basappa. The 1st defendant is the wife of Revanna. The plaintiff and 2nd defendant are the children of said Revanna. Suit schedule properties are the ancestral properties of plaintiff and defendants. There is no division in the family. During the lifetime of Basappa, an oral instruction was given to the defendants in order to allot 1/3rd share over the suit schedule properties in favour of plaintiff. Subsequent to marriage of plaintiff, she demanded the defendants to allot her legitimate share.

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However, the defendants prolong the matter and denied to allot her share. As such the plaintiff is entitled for her 1/3rd share over the suit schedule properties. Hence, the cause of action arose to file the suit. **With these averments, the plaintiff prayed to decree the suit.**

3. In response to the suit summons, defendants have appeared before this Court and they have engaged the services of an advocate and 2nd defendant filed his detailed written statement. The remaining defendant i.e., 1st defendant adopted the same.

4. The written statement averments of defendant No.2 is as hereunder:

The 1st defendant admitted the relationship of plaintiff and defendants and denied entire case of plaintiff. Inter-alia contended that, there is no ancestral properties in the family. The suit schedule properties are the exclusive properties of father of 2nd defendant. During the lifetime of father of plaintiff, he has performed the marriage of



plaintiff. The revenue official has committed a mistake, because of said mistake the word ancestral property is appeared in RTC. The plaintiff has no share over the suit schedule properties. As such the plaintiff is not entitled for any share in the suit schedule properties. ***With these contentions, 2nd defendant prayed to dismiss the suit.***

5. Based on the pleadings, the predecessor in office has framed the following;

ISSUES

- 1. Whether the plaintiff proves that the suit schedule properties are ancestral properties?**
- 2. Whether the plaintiff proves that the plaintiff is entitled for 1/3rd share in the suit schedule properties?**
- 3. Whether the plaintiff is entitled for the relief sought for?**
- 4. What order?**

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6. In order to prove the case of the plaintiff, the plaintiff has examined herself as PW1 by filing affidavit and also produced as many as 5 documents which have marked as Ex.P1 and Ex.P5. Thereafter, PW.1 failed to appear before this court to tender for cross-examination. Per contra, the 2nd defendant examined himself as DW1. It is relevant to note that, DW1 has not been cross-examined from the side of plaintiff.

7. Both side have not addressed arguments. Perused the materials available on record.

8. The findings of this Court on the above-referred Issues are as hereunder:

Issue No.1	: In the Negative
Issue No.2	: In the Negative
Issue No.3	: In the Negative
Issue No.6	: As per the final order, for the following:

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REASONS

9. Issue Nos.1 and 2: These two issues are inter connected. Hence, they have taken up together for common discussion in order to avoid repetition.

10. According to the plaintiff, the suit schedule properties are ancestral properties. During the lifetime of her grand father, he was orally instructed the defendants to allot her share. However, subsequent to the marriage of plaintiff, the defendants have not allotted her share. In order to prove the same the plaintiff has examined herself as PW1. In the affidavit the PW1 has reiterated the plaint averments in verbatim. Hence, this court need not to recapitulate the same Once again at this juncture. In addition to the oral evidence of PW.1, she has produced as many as 5 documents which have marked as Ex.P1 to Ex.P5. Thereafter, the PW1 has not offered herself for cross-examination from the side of Defendants. Further, it appears to this court that, the evidence of DW.1 need not

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required for discussion. Hence, this court do not wish to take the evidence of DW.1 for discussion.

11. At the cost of repetition PW.1 failed to appear before this court to offer herself for cross-examination. As such, as per Sec.114 of Indian Evidence Act this court can draw an adverse inference that the case put forth by the Plaintiff is not correct. At this juncture, it is worth to rely on the decision of the Hon'ble Apex Court and the Hon'ble Supreme Court of Karnataka. **AIR 1999 Supreme Court 1441 between Vidyadhara V/s Manik Rao & another.** The Hon'ble Apex Court at para 17 of the judgment held as here under:

“Where a party to the suit does not appear in the witness-box and states his own case on oath and does not offer himself to be cross-examined by the other side, a presumption

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would arise that the case set up by him is not correct”.

12. In addition to the above referred decision, it is worth to rely on another decision of our Hon'ble High Court of Karnataka reported in **2017 (2) KCCR 1723 (DB) between Tata consulting Engineers, Bombay V/s B.S.Shankar, wherein the Hon'ble High Court of Karnataka has observed that “when the party does not turn up for cross examination, his examination in chief cannot be taken into consideration for decreeing the suit. It was further observed that in such a cases a presumption has to be drawn that the case set up by such party is not correct”.**

13. In the instant case though the plaintiff examined has PW.1 and marked Ex.P1 to Ex.P5. But, she failed to appear before this Court to offer herself for cross-examination from the side of defendants. Hence, the above-referred decisions are aptly applicable to the case on hand.

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Under such circumstances the Plaintiff has failed to prove her case. Accordingly, this court is answered **Issue Nos.1 and 2 in the Negative.**

14. Issue No.3 : At the time of discussing issue Nos.1 and 2, this court has observed that, the plaintiff has failed to prove her case. Hence, **issue No.3 is answered in the Negative.**

15. Issue No.6: Thus in view of discussions referred to above, this Court proceeds to pass the following:

ORDER

The suit of the plaintiff is hereby dismissed. No order as to costs.

Draw decree accordingly.

(Dictated to the Stenographer, computerized by her, revised and corrected by me, and then pronounced in the open Court on this the 31st day of October, 2022)

(H.P.MOHAN KUMAR)
Prl. Civil Judge & JMFC,
Kadur.

**ANNEXURE****I: List of witnesses examined on behalf of Plaintiff:**

PW1 : Smt. Vasanthamma

II: List of documents marked on behalf of Plaintiff:

Ex.P1 : Computerized RTC extract pertaining to
Sy.No.116/2P2

Ex.P2 : Computerized RTC extract pertaining to
Sy.No.34/P2

Ex.P3 : Computerized RTC extract pertaining to
Sy.No.21/P5

Ex.P4 and Ex.P5: Computerized Mutation Register Extracts

III: List of witnesses examined on behalf of defendants:

DW-1 : Sri. Prakash

IV: List of documents marked on behalf of defendants:

-NIL-

**Prl. Civil Judge & JMFC.,
Kadur.**