

KACM210034982022



Government of Karnataka

TITLE SHEET FOR JUDGMENTS IN SUITS
IN THE COURT OF THE ADDL. CIVIL JUDGE & JMFC AT
KADUR

**PRESENT: Sri Aravindra B.C., B.A., L.L.B.,
I Addl. Civil Judge & JMFC.
Kadur.**

Dated this the 12th day of July 2023

O.S. No.458/2022

Plaintiff : Smt. Gowramma,
W/o Nanjundappa,
aged about 53 years,
Housewife,
R/o Korataekre,
Totadamane Village,
Kudluru Post,
Ajjampura Hobli,
Ajjampura Taluk,
Chikkamagaluru District.

(By Sri C.M.G., Advocate)

KACM210034982022



2

O.S. No.458/2022

V/S

- Defendants:**
- 1. Balappa, S/o Late Ariyappa, aged about 85 years, Agriculturist,**
 - 2. Smt. Shivamma, D/o Balappa, aged about 49 years, Housewife, R/o Vittalappura Village, Yallambalase Post, Yagati Hobli, Kadur Taluk, Chikkamagaluru District.**
 - 3. Shivakumar, S/o Balappa, aged about 48 year, Agriculturist,**
 - 4. Naveen, S/o Shivakumar, aged about 23 years, Agriculturist,**

The defendants No.1, 3 and 4 are R/o Koratakere Village, Kudluru Post,

KACM210034982022



3

O.S. No.458/2022

**Ajjampura Hobli,
Ajjampura Taluk,
Chikkamagaluru District.**

**(Defendant No.1 and 4 are Sri S.N.G., Advocate,
defendant No.2 and 3 are placed ex-parte)**

Date of Institution of the suit	08.08.2022
Nature of the suit	Partition
Date of commencement of recording of evidence	15.03.2023
Date on which judgment is pronounced	12.07.2023
Total Duration	Years Months Days 00 11 04

Sd/-

(ARAVINDRA.B.C.)

**ADDL. CIVIL JUDGE & JMFC.,
KADUR.**

JUDGMENT

This suit is filed by the plaintiff for the relief of partition and separate possession of his legitimate 1/4th

KACM210034982022



share in the suit schedule properties and declaring that gift deed dated 09.09.2019 and 21.04.2022 executed by defendant No.1 in favour of defendant No.5 is not binding on her legitimate share in the suit schedule properties and costs and such other reliefs which the Court deems fit to grant under the facts and circumstances of the case.

2. The facts of the case of the plaintiff are as follows:-

It is the case of the plaintiff is that, the defendant No 1 is the father of the plaintiff and defendant No.2 and 3. The defendant No.4 is the son of defendant No.3. The plaintiff and defendants are constitute Hindu Joint Family and suit schedule properties are the Joint Family properties of the plaintiff and defendants. Further alleges that, so far there is

KACM210034982022



5

O.S. No.458/2022

no partition among the plaintiff and defendants. The defendant No.1 has no exclusive right to execute gift deed in question in favour of the defendant No.1 and he has no intention to execute the same and the defendant No.4 has misused the old age of the defendant No.1 and got gift deed in his favour. Further, the defendant No.4 has change the Katha in his name on the basis of alleged gift deed, he has mismanaged the joint family properties hence, the plaintiff has demanded for partition, but he refused the same. Further alleges that, the cause of action for the suit has arisen on 21.10.2019. When the defendants refused to make partition and within jurisdiction of this Court. By considering so, the plaintiff has prayed for Judgment and Decree as prayed for.

3. After filing of this suit, the suit summons were issued and same was duly served on the defendants. In

KACM210034982022



spite of service of summons the defendants not appear before this court. Hence, they were placed exparte. Further record shows that the later the defendant No 1 and 4 have appeared before the court through their counsel along with application under order 9 Rule 7 of Code of Civil Procedure and considering the application set-aside the exparte order against the defendant No 1 and 4. However, the defendant No.1 and 4 not filed written statement. Hence, written statement of defendant No.1 and 4 taken as not filed.

4. Based on the pleadings, the following points arises for consideration of this court.



P O I N T S

- 1. Whether the plaintiff proves that the suit schedule properties are the joint family properties of herself and defendants?**

- 2. Whether the plaintiff proves that the defendant No.1 has no exclusive right to execute the gift deed dated 09.09.2019 and 21.04.2022 in favour of defendant No 4 and the said gift deeds are not binding on the her legitimate share?**

- 3. Whether the plaintiff is entitled relief sought for in the plaint?**

- 4. What order or decree?**

5. To substantiate his contentions, the plaintiff has examined himself as Pw-1 and got exhibited on documents as per Ex. P-1 to P-14. On the other hand,



defendant No.2 and 3 were placed exparte and defendant No 1 and 4 not filed written statement.

6. Heard arguments of the learned counsel appearing for the plaintiff and perused the materials available on record.

7. The findings of this Court on the above-referred Points are as hereunder.

- Point No.1 : **In the Affirmative**
- Point No.2 : **In the Affirmative**
- Point No.3 : **In the Affirmative**
- Point No.4 : **As per the final order for the following:**

REASONS

8. **Point Nos.1 and 2:** These two points are taken together for discussion since they are

KACM210034982022



interconnected, and so also they require common discussion.

9. According to plaintiff that the she is the daughter of defendant No.1, defendant No.2 is the her sister and the defendant No.3 is her brother and defendant No 4 is the son of defendant No.3. Further she say that, suit schedule properties are the Joint Family properties of the family of plaintiff and defendants and they are in joint in possession in the suit schedule properties.

10. The record shows that the plaintiff has examination himself as Pw-1. The Pw-1 has filed his affidavit under Order 18 Rule 4 o Code of Civil Procedure containing his examination in chief, wherein he deposed



that the suit schedule properties are the joint family properties of propositus plaintiff and defendants and the defendant No.1 has acquired properties by way of inheritance. To substantiate her contention in this regard, the Pw-1 has produced the documents. Now this Court to discuss the documents produced by the plaintiff.

11. The Ex. P-1 is is the Genealogical Tree of family of plaintiff and defendants, which clearly indicates that, the defendant No.1 his wife Gangamma had two daughters and one son. Ex. P-1 is not denied by the defendants. Hence, the plaintiff, defendant No.2 and 3 are the children of defendant No.1. The defendant No.4 is son of defendant No.3. The Ex. P-3 is Record of Rights,

KACM210034982022



11

O.S. No.458/2022

Ex. P-4 is Index of Lands, which discloses that the katha of the property stands in the name of father of defendant No.1.

12. The Ex. P-4 and 5 are the R.T.Cs. extract in respect of the land bearing Sy. No.95/4 measuring 2 acres and Ex. P-6 is the R.T.C. extract in respect of land bearing Sy. No.95/4, measuring 2 acres and Ex. P-7 is the R.T.C. extract with respect to Sy. No.42/2, measuring 1 acre of land. Ex. P-9 is the certified copy of Gift deed dated 06.09.2019, executed by defendant No.1 in favour of defendant No.4. With respect to item No.1 of plaint schedule. Ex. P-10 is the certified copy of Gift deed dated 21.04.2022, executed by defendant No.1 in favour of defendant No.4.



13. As per the records the defendant No.1 has acquired the schedule properties by way of inheritance by vide M.R. No.4/1997-98. Therefore, the suit schedule properties are the joint family properties of plaintiff and defendants.

14. The plaintiff alleges that, the defendant No.1 has no exclusive right to execute the registered Gift deed in question in favour of defendant No.4. At this stage this Court relied upon the Judgment of Hon'ble Apex Court in case of Rohith Chauhan Vs. Surindra Singh and others, reported in 2013(9) SCC 419, wherein the Hon'ble Apex Court held that;

“A contention was raised by the defendant No.1 that after partition of the joint Hindu Family property, the land allotted to the share of defendant No.2 became his self acquired property and he was competent to



transfer the property in the manner he desired. It was held that, the property, which defendant No.2 got by virtue of partition decree amongst his father and brother was although separate property qua other relations, but it attained the characteristic of co-parcenor property the moment a son was born to defendant No.2 it was held thus;

A person who for the time being is the sole surviving co-parcenor as in the present case Gulab Singh was before the birth of the plaintiff was entitle to dispose of the co-parcenary property as it his were separate property. Gulab Singh, till the work plaintiff Rohith Chown was competent to sell, mortgage and deal with the property as his property in the manner he liked. Had he done so before the birth of plaintiff Rohith Chown he was not competent to object to the alienation made by his father before he was born or begotten". In view of the settle legal position, the property in the hands of defendant No.2 allotted to him in partition was a separate property till the birth of plaintiff and after his birth the defendant No.2 would have alienated the property only has Kartha for legal necessity".

15. In the present case on hand the defendant No.1 had executed the Gift deed in favour of defendant

KACM210034982022



No.4 with respect to the schedule properties. Admittedly, as on the date of execution of alleged Gift deeds the defendant No.1 had got two daughters and one son. Therefore, the defendant No.1 has no exclusive right over the schedule properties.

16. The record shows that the defendants not challenged the oral and documentary evidence produced by the plaintiff. Hence, this Court is of the opinion that, the suit schedule properties are the joint family properties of plaintiff and defendants. Once it is established that the suit schedule properties are the Joint family properties of plaintiff and defendants, the inevitable conclusion that has to be drawn is that, the parties to the suit are in joint possession and enjoyment



of the suit schedule properties. Hence, this Court answered Point No.1 and 2 in the **Affirmative**

17. **Point No.3:** This issue is relating to the quantum of plaintiff and defendants share in the suit schedule properties. The plaintiff contends that he is entitled for 1/4th share in the suit schedule properties. Admittedly, the plaintiff, defendant No.2 and 3 are the children of defendant No.1 and the defendant No.1 is acquired the schedule properties by inheritance. Further admitted that there is no partition between the plaintiff and defendants.

18. According to the new Section 06 of Hindu Succession Act the daughter of a Co-parcener becomes a coparcener by birth in her own rights and liabilities in



the same manner as the son. The declaration in Section 6 that the daughter of the co-parcener shall have same rights and liabilities in the co-parcenary property as she would have been son is unambiguous and unequivocal. It is relevant to refer the decision of Hon'ble Apex Court in the case of Veenitha Sharma Case reported in (2020) 9 SCC 1, wherein the Hon'ble Apex Court held that;

(i) The provisions contained in substituted Section 6 of the Hindu Succession Act 1956 confer status of co-parcener on the daughter born before or after amendment in the same manner as son with same rights and liabilities.

(ii) The rights can be claimed by the daughter born earlier with effect from 09.09.2005 with savings as provided in



Section 6(1) as to the disposition or alienation, partition or testamentary disposition, which had taken place before 20th day December 2004.

(iii) Since, the right in co-parcenary is birth, is not necessary that father co-parcener should be living as on 09.09.2005:

19. Therefore, the substitution of Section 06 of the Hindu Succession Act, resulted in treating the daughter in equal with the son, thereby one pressing demand was complied with. Accordingly the plaintiff and defendant No.2 are the daughters of defendant No.1. Hence, they are also co-parceners. The registered Gift deed dated 09.09.2019 and 21.04.2022 executed by 1st defendant in favour of defendant No.4 are not binding the plaintiff



1/4th share. Accordingly, the plaintiff and defendant No.1 to 3 are entitled 1/4th share equally in the suit properties. Hence Point No.3 in the **Affirmative**.

20. **Point No.4:** Foregoing reasons and answering Point No.1 to 3 as above this court proceed to pass the following;

ORDER

1. The suit of the plaintiff is hereby decreed.
2. The plaintiff is entitle 1/4th share in the suit schedule properties.
3. The defendant No.1 to 3 are also entitle 1/4th share in the schedule properties.

KACM210034982022



19

O.S. No.458/2022

4. It is ordered to the declared that the registered Gift deed dated 09.09.2019 and 21.04.2022 executed by defendant No.1 in favour of defendant No.4 is not binding the plaintiffs 1/4th share of the schedule properties.

5. Looking into relationship of the parties no order as to cost.

Draw preliminary decree accordingly.

(Judgment dictated to the stenographer on computer typed by his, revised, corrected & then pronounced by me in open court on this the 12th day of July 2023)

Sd/-

(ARAVINDRA.B.C.)

I Addl. Civil Judge & JMFC,
Kadur.

ANNEXURE

I: List of witnesses examined on behalf of Plaintiffs:

PW-1 : Smt. Gowramma

KACM210034982022



20

O.S. No.458/2022

II: List of documents marked on behalf of Plaintiff:

- Ex.P-1 : Genealogical tree
Ex.P-2 : Record of Rights
Ex.P-3 : Index of Lands
Ex.P-4-6 : R.T.Cs.
Ex.P-7-8 : R.T.Cs.
Ex.P-9 : Certified copy of Gift deed dated
06.09.2019
Ex.P-10 : Certified copy of Gift deed dated
21.04.2022
Ex.P-11-13: Mutation register extracts
Ex.P-14 : House/Site tax assessment extract

III: List of witnesses examined on behalf of defendant : - Nil -

IV: List of documents marked on behalf of defendants: - Nil -

Sd/-
**I Addl. Civil Judge and JMFC.,
Kadur.**