



**IN THE COURT OF THE PRL.,CIVIL JUDGE & JMFC.,
AT GUNDLUPET**

Dated on this the 2nd day of December, 2022.

:PRESENT:

**SRI. SHIVAKUMARA G.J.,
B.A.L.L.B.,
Prl. Civil Judge & J.M.F.C.,
Gundlupet.**

O.S. No.125/2014

Plaintiffs:

- 1. Sri. Revanna**
Aged about 40 years,
S/o Late. Basappa,
- 2. Smt. Nagamma**
Aged about 35 years,
S/o Late. Basappa,
Both are R/at Kabbahalli Village,
Beguru Hobli, Gundlupet Taluk.

(By Sri G.R., Advocate)

V/s

Defendants:

- 1. Smt. Gurumallamma**
Aged about 65 years,
W/o Late. Kongalappa,
- 2. Sri. Kongallimallu**
(Dead by Lrs.,)

**2(a). Smt. Drakshayini**

Aged about 42 years,
W/o Kongallimallu,

2(b). Smt. Shwetha

Aged about 21 years,
D/o Kongallimallu,

2(c). Smt. Sowmya

Aged about 19 years,
D/o Kongallimallu,
All are R/at House No.160,
Pushpa Papanna Nilaya,
Ringroad, Mysore.

3. Sri. Nagaraju

S/o Late. Kongalappa,
Aged about 45 years,
R/at Mahadeshwara Layout,
Hullahalli road,
Nanjangud Town.

4. Smt. Mahadevamma

W/o Mahadevappa,
R/at Bettadapura Village,
Chamarajanagar Taluk.

5. Smt. Chinnamma v

Dead by LRs.,

5(a) Sri. Mallappa

Aged about 40 years,
S/o Late. Chinnamma,

5(b) Sri. Shivabasappa



Aged about 35 years,
S/o Late. Chinnamma,

5(c) Smt. Mangalamma

Aged about 30 years,
D/o Late. Chinnamma,
All are R/at Kabbahalli Village,
Beguru Hobli, Gundlupet Taluk.

**(D1, 5 to 8, D2(a) to (c)- Exparte)
(D3 and 4 – Sri. HNM Adv.,)**

Institution of the suit	:	06.06.2014
Nature of the suit	:	Partition Suit
Recording of evidence	:	04.06.2015
Closing of evidence	:	21.07.2022
Pronouncing of Judgment	:	02.12.2022

Years Months Days

Total Duration of the Suit	:	07	09	00
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**(SHIVAKUMARA.G.J)
Prl. Civil Judge & JMFC.,
Gundlupet.**



J U D G M E N T

This is a suit filed by the plaintiffs for the relief of partition of 1/3rd share in the suit schedule properties.

2. Plaintiff described the suit properties at the schedule of the plaint and same is reproduced here under:

S C H E D U L E

1. Land bearing Sy. No.351/2, measuring 1 acre 2 guntas situated at Kabbahalli Village, Beguru Hobli, Gundlupet Taluk and it is bounded on East by the land of Thayamma, West by the land of Basavarajappa, North by the land of Thayamma and South by the land of Thayamma.

2. Land bearing Sy. No.326/1, measuring 3 acre 08 guntas,

3. Land bearing Sy. No.326/3, measuring 39 guntas at situated at Kabbahalli Village, Beguru Hobli, Gundlupet Taluk and the item no. 2 and 3 are bounded in common boundaries as



bounded on East by the land of Thayamma, West by the land of Basavarajappa, North by the land of Thayamma and South by the the land of Thayamma.

4. Land bearing Sy. No.356, measuring 2 acre 13 guntas,

5. Land bearing Sy. No.357, measuring 2 acre 12 guntas situated at Kabbahalli Village, Beguru Hobli, Gundlupet Taluk and item no. 4 and 5 are bounded in common boundaries as bounded on East by the Road, West by the land of Shivapadappa, North by the land of Shivarudrappa and South by the land of Shivappa.

6. Land bearing Sy. No.354, measuring 2 acre 14 guntas situated at Kabbahalli Village, Beguru Hobli, Gundlupet Taluk and it is bounded on East by the land of Mallappa, West by the land of K.C.Subbannanavar, North by the land of Subbappanavar and South by the land of K.C.Subbannanavar.



Hence forth for the sake of convenience the above described properties is called as suit properties.

3. The brief facts of the plaintiffs case is that :-

It is specifically contended that the plaintiffs are the children are Basappa, the defendant 2 to 4 are the children of the Kongalappa and defendant no. 6 to 8 are the children of Subbappa. The suit schedule properties are the joint properties of Kongalappa, Subbappa and Basappa. The Subbappa is the father of the Kongalappa, Subbappa and Basappa, Subbappa is the propositious of the joint family. The suit schedule properties are joint family properties of the plaintiff of the defendants. All the properties were acquired by Subbappa who was the original propositious of the family. And thereby the plaintiffs and defendants constitute a Joint Hindu Family and all the suit schedule properties are the



joint family properties which continued in joint possession and enjoyment of the plaintiffs and defendants. And there is no division of properties between the plaintiffs and defendants. And in-spite of repeated requests and demands the defendants have not effected partition and they were dodging the plaintiffs in one or the other pretext. And on such being the case on 24.02.2014 plaintiffs have demand for 1/3rd share in the property through issuing legal notice to the defendants and the defendants have refused to effect the partition of the plaint suit schedule properties. when the defendants have refused to effect the partition of the suit schedule property and they are claiming ownership over the suit schedule property as there is no alternative for the plaintiffs to file this suit for partition and separate possession. **Hence, they prayed for decreeing the suit.**



4. For this plaint, it is only the defendant no. 1 to 4 who have filed Written Statement contended that the suit schedule property item no 4 and 5 are the self acquired properties of the defendant no 1 to 4. The defendant no. 1 husband, the father of the defendant no. 2 to 4 Kongalappa had acquired suit property item no. 4 and 5 through registered sale deed dated 18.02.1980. The defendant no. 1 to 4 further contended that the suit schedule properties were already partition between plaintiffs father and father of the defendant no. 2 to 4 and father of the defendant no. 5 to 8 Subbappa. And now the suit has been filed only to grab valuable properties of defendants. **Hence they prayed for dismissal of the suit.**

5. In order to prove the the case of the plaintiffs, the 1st plaintiff himself examined as PW.1. In support of their evidence, they have got marked document Exs.P.1 to P.19.



Per contra the defendants have not examined by giving several opportunities.

6. I have heard the arguments of both plaintiffs counsel **Sri. G.R., and defendants counsel Sri. H.N.,**

7. In view of the evidence adduced by the plaintiffs and defendants, the documents got marked by the plaintiff and defendants and now the following issues are arose for consideration:

ISSUES

1. Whether the plaintiffs prove that, suit schedule properties are joint family property and they are in joint and constructive possession of the suit schedule properties?
2. Whether the plaintiffs further proves that the suit schedule property is not partitioned?



3. Whether the defendants prove that, the father of the the plaintiffs already sold some of the suit schedule properties during his life time?

4. Whether the plaintiffs further proves that, they are entitled to get relief sought in the plaint?

5. What order or decree?

8. My answer to the above Issues are as follows :

Issue No.1 : **In the Affirmative,**

Issue No.2 : **In the Affirmative,**

Issue No.3 : **In the Negative,**

Issue No.4 : **In the Affirmative,**

Issue No.5 : **As per final order,**

for the following:

REASONS

9. ISSUES NOs.1 and 3 :- As these points are inter-connected to each other to avoid repetition of facts all these points are taken up for discussion together.



10. The Specific case of the plaintiffs is that the plaintiffs and defendants constituted Hindu undivided joint family and suit schedule properties are the joint family properties of the plaintiffs and defendants. There was no partition in the family. As the plaintiffs are contending that 1st defendant is the son of Basappa and 2nd defendant daughter of late Basappa and Shivamma. And all the suit schedule properties were belonging to grand father Subbappa and they are in joint possession and enjoyment of the suit schedule property along with the defendants. And as this is a suit filed for partition the plaintiffs has to establish the existence of joint family and as well as the Ancestral property. And he must also establish the fact that the properties were continued with the joint family members. It is to be noted that in the plaint the plaintiffs have specifically contended that the plaintiffs father Basappa, father of the defendant No.2 to 4 Kongalappa and



father of the defendant No.6 to 8 Subbappa are the children of Subbappa and Madamma, they are the joint family members. The plaintiffs and defendants are the constitute the legal representative of Subbappa and Madamma. The plaintiffs got share in the suit schedule properties and hence prayed for decree the suit.

11. Per contra, On the other hand the defendants have contended that the suit schedule properties were partitioned between the plaintiffs father Basappa, Kongalappa and Subappa and further contended that the suit property item No.4 and 5 were the self acquired properties of the father of the defendant No.1 to 4. Hence, they prayed to dismissal of the suit.

12. Though in order to establish the fact of existence of joint family and nature of ancestral properties of the plaintiffs, the plaintiff No.1 examined as Pws.1, The PW.1



has filed his affidavit **u/o 18 rule 4 CPC** in lieu of his examination-in-chief, wherein he has reiterated the entire plaint averments and he has produced Exs.P.1 to 19. Further, it is relevant to note that the PW.1 has been cross-examined, But in the cross examination of PW-1 except suggestions nothing has been elicited by the learned counsel for the Defendants. During the chief examination he has stated that, the plaintiffs father Basappa and defendant No.2 to 4 father Kongalappa and father of the defendant No. 6 to 8 Subbappa are the the Children of Subbappa and Madamma. And all the suit schedule properties were belonging to his grand father Subbappa and they are in joint possession and enjoyment of the suit schedule properties along with the defendants. And defendants and plaintiffs constitute the legal representative of Subbappa and Madamma. To corroborate the fact of relationship, the plaintiffs have



reproduce the G- Tree in the plaint. And the said G - tree is not specifically denied by the defendants. And it is also the case of the plaintiffs that after the death of Subbappa and Madamma the properties have been succeeded by plaintiffs and defendants. And specific contention of the plaintiffs that the defendant No.1 to 4 was looking after the management of the schedule properties and they have assured that a partition will be effected in the properties and allot the share of the plaintiffs. The relationship of the plaintiffs have not been disputed by the defendants. Therefore, it not required much discussion regarding the relationship between the parties.

13. The record of rights produced by the plaintiffs as Ex.P2 to 6, it shows that the mutation is effected in the name of defendant Nos.2,3 and 6 as jointly, further the Pw.1 produced one Mutation as Exs.P7 and 8, as per



Exs.P7 and 8 Mutation extracts and as per Exs.P14 to 19 Records of Rights it is stated that the suit properties were ancestral properties of the plaintiffs and defendants as Pithrarjitha. It is a well established principles of law that, It is not in dispute that the plaintiffs are not the children of Basappa and Shivamma. On the other hand, the relationship of parties has been specifically admitted. Under such circumstances, I am of the opinion that the plaintiffs have successfully established that there existence of a joint family property as on the date of filing of the suit and they are having a right in the suit schedule properties.

14. Further, the defendants have miserably failed to established the fact that the properties were already partitioned between the joint family members. The RTC and other document such as Exs.P.2 to 19 will also establishes the fact that the properties are continued as a



joint family property and ancestral property and continued in the name of joint family members. It is to be specifically noted that whenever a suit filed by the plaintiff for the relief of partition and separate possession claiming that properties are ancestral properties then a presumption has to be drawn in favour of the plaintiffs holding that the properties are ancestral properties. And the burden is upon the plaintiffs to establish the fact that as on the date of suit the properties were continued in the name of joint family members. And admittedly, the document such as Ex.P.1 to 8, 14 to 19 will establishes the case of the plaintiffs with regard to the properties as a ancestral properties. But to prove said partition of the joint family properties and the suit property item no.4 and 5 were the self acquired properties of the father of the defendant No.1 to 4 the defendants have not been produced any materials nor examined. Therefore, it can



be held that the defendants have failed to establish the defence pleaded by them. The proof or non proof of said fact will not be relevant to the decision of the suit. In such a circumstances, I am of the opinion that the plaintiffs have successfully established the relationship with late Subbappa and Madamma and defendants. And also successfully established the joint possession and enjoyment of the suit schedule properties along with defendants. Hence, I have no hesitation to answer Issue No.1 in the **Affirmative.**

Issue No.3 in Negative

15. Issue No.2 and 4:- As these points are interconnected to each other to avoid repetition of facts all these points are taken up for discussion together.

16. It is to be specifically noted as already discussed in detail in issue No.1, I have come to a specific conclusion that the properties are joint family properties of plaintiff



and defendants. It is also established before the court that there is no prior division of the properties between the joint family members. When the plaintiffs established the existence of joint family property as on the date of filing of the suit and in the event of non proving the fact that there was an earlier partition between the joint family members along with the plaintiffs by the defendants then the plaintiffs is entitled for share in the property. To disprove the claim of the plaintiffs the defendants have not been placed any specific materials. Under such circumstances, the question of disregarding the claim of the plaintiff does not arise at all. In view of the discussion made above, I am of the considered view that the plaintiffs are entitle the relief as claimed in the present case. Hence, I have no hesitation to answer Issue No. 2 and 4 in the **Affirmative**.

17. Issue No.3 :- In view of the discussion made above, I will proceed to pass the following :-



O R D E R

The suit of the plaintiffs is hereby decreed.

The plaintiffs are jointly entitled for 1/3rd share over the suit properties.

Further the defendant Nos.1 to 4 are jointly entitled for 1/3rd share, defendant No.5 to 8 are jointly entitled for 1/3rd share over the suit properties if the Court fee is paid.

The defendants are hereby directed to effect the proportionate the suit schedule properties within 6 months from the date of this order.

Draw preliminary decree accordingly.

Office is directed to register the final decree proceeding for effecting the partition as provided U/sec.54 of CPC after the appeal period is closed.



Since the parties are family members, no order is made to cost.

(Typed by me and corrected and initialed by me and then pronounced by me in the open court on this 2nd day of December, 2022)

(SHIVAKUMARA G.J)
Prl. Civil Judge & JMFC.,
Gundlupet.

ANNEXURE

I. WITNESS EXAMINED ON BEHALF OF THE PLAINTIFF:

PW1 : Smt. Revanna

II. DOCUMENTS MARKED ON BEHALF OF THE PLAINTIFF:

Ex.P1 to 6	:	Computerized RTC extracts
Ex.P7	:	Change of Rights Mutation Extract
Ex.P8	:	M.R No. 10/1981-828 CC Copy
Ex.P9	:	Legal Notice
Ex.P10 &11	:	Postal Receipts
Ex.P12 &13	:	Postal Acknowledgments
Ex.P14	:	Record of Rights.
Ex.P15 to 19	:	Index of lands.



III. WITNESS EXAMINED ON BEHALF OF THE DEFENDANTS:

-NIL-

IV. DOCUMENTS MARKED ON BEHALF OF THE DEFENDANTS:

-NIL-

V. LIST OF WITNESSES EXAMINED ON BEHALF OF COURT:

-NIL-

VI: LIST OF DOCUMENTS MARKED ON BEHALF OF COURT:

-NIL-

**(SHIVAKUMARA G.J)
Prl. Civil Judge & JMFC.,
Gundlupet.**