

KACN310006362016



Presented on : 17-08-2016
Registered on : 07-09-2016
Decided on : 09-08-2024
Duration : 7Y 11M 13D

**IN THE COURT OF THE SENIOR CIVIL JUDGE AND JMFC AT
KOLLEGALA**

:PRESENT:

Smt.Sunitha, B.Com., L.L.M., PGDFsc
Senior Civil Judge and JMFC.,

Dated this the 9th day of August 2024

O.S.NO.17/2016

Plaintiff: Smt.Saraswathi w/o Ananda, 42 years,
R/at No.49, Sathi main road, Ramakrishnapuram,
Ganapathim, Coimbatore – 570 029.
(By Sri S.Rudraradhya, Advocate)

:Versus:

Defendants: 1.R.Ravinaidu s/o Ramakrishnanaidu, 59 years,
2.Smt.Jyothi d/o late R.Srinivasanaidu, 42 years,
both are r/o Mysoorammanna beedi,
Hanuru town, Kollegala Taluk.
3.Krishnegowda s/o Kempegowda, 45 years,
r/o Vinayakanagara, Hanuru town,
Kollegala Taluk.
4.Madesha s/o late Lingegowda, 45 years,
r/o Maruthinagara, Hanuru town,
Kollegala Taluk.
5.Kum.Keerthana d/o late R.Srinivasanaidu, major,
6.Prajwal s/o late R.Srinivasanaidu, major,
being minors rep. By her mother,
both are r/o Mysoorammanna beedi,
Hanuru town, Kollegala Taluk.
7.Venkataraju s/o Chaluvegowda, major,
r/o Marigudi beedi, Hanuru town,
Kollegala Taluk.

8.T.G.Manjesha s/o T.R.Govindaraju, major,
r/o Door No.7/503A, Devanga colony,
Kollegala Town.
(By Sri S.S.B., for D1, Sri PDP, for D2, D5 and D6, Sri
M.P. for D3 and D4, Sri Hemanthakumar for D7 and D8,
Advocates)

Date of Institution	17.08.2016
Nature of the Suit	Partition & separate Possession
Date of Commencement of recording of Evidence	09.11.2020
Date of Pronouncement of Judgment	09.08.2024
Total Duration	Year/s Month/s Day/s 07 11 13

(SUNITHA)
Senior Civil Judge & J.M.F.C.,
Kollegala.

J U D G M E N T

This suit is filed by the plaintiff for partition and separate possession of her 1/3rd share over the plaint schedule property and for mense profits and to declare the documents which executed by defendants if any is not binding on her in respect of the properties mentioned below:

A schedule Property bearing s.no; 191 measuring 4-10 cents of Hanur Hobali, Kollegala taluk, Chamrajanagar District.

B schedule Property bearing s.no; 218/A31B1 out of measuring 5-57 cents, 0-10cents of Hanur Hobali, Kollegala Taluk, Chamarajanagar district.

C schedule property bearing s.no; 222/1 out of measuring 3-11 cents, house site measuring 0-44 cents in 01-00 acre of Hanur Hobli, Kollegala Taluk, Chamrajanagar district.

Property bearing s.no; 223/1 out of measuring 3-24 cents, house site measuring 0-31 cents in 01-00 acre of Hanur Hobali, Kollegala taluk, Chamrajanagar District. (in total 40x70 manglore tiled house and oil mill in total 0-75 cents.

D schedule Property bearing s.no; 9 out of measuring 1-71 cents, 0—40 cents of shiragudu village Hanur Hobali, Kollegala taluk, Chamrajanagar district.

E schedule Property bearing s.no; 224/D measuring 0-82cents of Belathur village Hanur Hobali, Kollegala taluk , Chamrajanagar district.

F schedule Property bearing s.no; 223 measuring 2-55 cents of Belathur village Hanur Hobali, Kollegala taluk, Chamrajanagar district.

G schedule Property bearing s.no; 221/B measuring 0-37 cents of Belathur village Hanur Hobali, Kollegala taluk, Chamrajanagar district.

H schedule Property bearing s.no; 220/A measuring 2-21 cents of Belathur village Hanur Hobali, Kollegala taluk, Chamrajanagar district.

I schedule Property bearing s.no; 224/C measuring 0-20 cents of Belathur village Hanur Hobali, Kollegala taluk, Chamrajanagar district.

J schedule Property bearing s.no; 220/B2 measuring 0-75cents of Belathur village Hanur Hobali, Kollegala taluk , Chamrajanagar district.

K schedule Property bearing s.no; 220/B1C measuring 4-50 cents of Belathur village Hanur Hobali, Kollegala taluk, Chamrajanagar district.

L schedule Property bearing s.no; 220/D2 measuring 2-07 cents of Belathur village Hanur Hobali, Kollegala taluk, Chamrajanagar district.

M schedule Property bearing s.no; 168/2 measuring 5-47 cents of Belathur village Hanur Hobali, Kollegala taluk, Chamrajanagar district.

N Schedule property 3rd Bloc, Naidu street, House property bearing no; 24d, house site and vacant site measuring EAST-WEST 30, south 33 old house, and EAST –WEST 35 south 36 New house and three commercial shops.

O Schedule property bearing s.no; 220/1 measuring 0.95 cents (0.09 converted) of Hanur village, Kollegala Taluk, Chamrajnagar Dist.

P Schedule property bearing s.no; 220/1B 2nd Block site no; 263/656/277/36 in 0.43 cents ,E-W 34 S.N 134 =4556 sqft of Hanur village, Kollegala Taluk,Chamrajnagar Dist.

2. The case of the plaintiff in nutshell is that;

Originally the suit schedule property is belonged to her parents namely Ramakrishna Naidu and Smt.Chinnamangamma having acquired the same under partition and they were cultivating in the said property. Further, her father Ramakrishna Naidu purchased some property as a karta of the family. During his life time he executed a Gift deed in favour of his wife in respect of C schedule property. The said Ramakrishna Naidu died intestate leaving behind his wife and three children i.e plaintiff, 1st defendant and Srinivasa Naidu. Subsequently her mother Chinnamangamma and brother Srinivasa Naidu died leaving behind plaintiff, 1st defendant and wife of Srinivasa Naidu/2nd defendant and his children, and they inherited the suit property. It is further case of the plaintiff that suit schedule property is the joint family property and they are in joint possession and enjoyment of the same. As such she demanded for the partition and separate possession of the suit property with 1st defendant. Since he refused she has called the elders to panchayat to resolve the dispute. Even in their presence as 1st defendant refused to give any share to the plaintiff she compelled to

file this suit. It is stated defendants have created some documents which are not binding on her.

3.It is stated the cause of action arosed on 10-7-2016.That parties to the suit ,and properties located, and value of the properties comes within the jurisdiction of this court. Hence prays for decree the suit.

4.The 1st defendant filed the written statement resisting the claim of the plaintiff by denying the averments in the plaint and put forth their case stating this suit is not maintainable as description mentioned in the schedule are not proper. However admitted the suit properties are the ancestral property of Ramakrishna Naidu and some of the properties were purchased by his father as kartha of the family.

5.It is contended during the life time of his father Ramakrishna Naidu, orally partitioned the suit property between himself, brothers and husband of 2nd defendant. The plaintiff was given 9 house sites under unregistered Relinquishment Deed dated 20.4.1999 situated within the Hanur Panchayath, 2nd block bearing khatha no.277/1, 277/2, 277/3, 277/4, 277/5, 277/6, 277/7, 277/8 277/9 measuring East-West 40 and North south 60 feet having road from Bandalli village and khatha was transferred into her name by virtue of UN-registered Relinquishment Deed. Despite of taking her share, she along with her mother filed OS 73/2014 for seeking partition out of the property measuring 0-43 cents, 0.09 cents in bearing s.no.221/1 before the Civil judge and JMFC, Kollegala and same is withdrawn. The said fact has been suppressed by the plaintiff. It is contended in view of taking the share in partition, joint family no more exists. On the other hand it is stated in A schedule property in s.no;191 of Hullepura village out of 4.10 acres, the 1st defendant was allotted 2.05 acres and Srinivasa Naidu was allotted

2.05 acres, in B schedule out of 10 cents 0.05 cents each allotted to 1st defendant and Srinivasa Naidu, in C schedule in s.no; 222/1 out of 1.00 acre 0-44 cents house site was sold together by plaintiff and defendants to one Subbaraju. It is stated s.no;223/1, measuring 0-31 cents gifted to Chinnamangamma by his father. After death of his mother Chinnamangamma it has come to the possession of defendants no;1, 2 and Defendant No.5 & 6. Though D schedule property stands in the name of Chinnamangamma it is been divided equally between 1st defendant and Srinivasa Naidu. It is stated in E schedule in s.no;224/4 measuring 0-82 cents and in H schedule bearing s.no;220/1 measuring 2-21 of Belthur grama was purchased by 1st defendant under reg sale deed on 30-3-1995 and it is his self acquired property. It is stated in F schedule bearing s.no; 223 measuring 2 acre-50cents was allotted to the share of 1st defendant and khata also transferred into his name. It is stated G schedule bearing s.no; 221/1b measuring 0-37 cents and J schedule s.no; 220/b2 measuring 0-75 cents was purchased by 1st defendant under reg sale deed 24-10-1994 as such it is his self acquired property, in "I" schedule bearing s.no.224/c measuring 0-20 cents, and in K schedule bearing s.no.220/b1c measuring 4-50 cents was allotted to the share of 1st defendant and khata transferred into his name. It is stated schedule L and M property was sold by his mother Chinnamangamma, Srinivasa Naidu and his children under reg sale deed to 1st defendant, which they acquired through partition, for the maintenance of the minor children's and for education. It is stated in N schedule, house and house site allotted equally to 1st defendant and Srinivasan Naidu. The oil mill in the property bearing s.no.223/1 measuring 0-31 cents of Hanur grama is belong to 1st defendant. It is stated in P schedule measuring east-west 34 feet, southern 134,

measuring 4556 square feet, situated at kollegala, Hanur pattna was sold to one Venkataraju under reg sale deed who is arrayed as defendant no;7 in this case. It is stated the plaintiff has not challenged the partition which took place in the year 1993 and the transaction of the year 1999 were not challenged within limitation. Therefore the suit is barred by limitation.

6. Further by filing additional written statement contended that since the date of oral partition took place, the 1st defendant is in possession and enjoyment of the property. For financial necessity two years ago sold O schedule property to defendant no.3 and 4 and handed over the possession. Therefore prayed for dismissal of the suit.

7. The defendant no;7 and 8 also filed their written statement. It is contended the 1st defendant and plaintiff are not residing together. It is stated 1st and 2nd defendant jointly sold item no.P schedule for clearing loans and family necessity under reg sale deed on 13.4.2016 for a sale consideration of Rs.8,08,000 and handed over the possession to defendant no.7 and 8. The plaintiff got her share in the year 1999. These defendants are a bonafide purchaser of the property stated above. It is contended the plaintiff has not challenged the sale deed dated 13.4.2016 within the time fixed and therefore suit is barred by law of limitation. It is denied the cause of action one stated in the plaint. It is contended as on filing suit the joint family was not existing. Therefore, prays for dismissal of the suit.

The defendants No.2 to 6 have not filed written statement.

8. Based on the above pleadings, my predecessor framed issues which are recasted as below:

RECASTED ISSUES

1. Whether the plaintiff proves that the suit schedule properties are the ancestral properties of herself and defendant No.1 and 2?
2. Whether the 1st defendant proves that, item No.A, B, D, F, I, K, N properties are acquired under the oral partition in the year 1993?
3. Whether the 1st defendant proves that item No.C property sold by himself and his minor children, his mother Chinnamangamma, plaintiff and husband of 2nd defendant and his minor children to one Subbaraju?
4. Whether the 1st defendant proves that he and 2nd defendant and her children after the death of Chinnamangamma are inherited the property given to her under Gift?
5. Whether the 1st defendant proves that item No.E, H, G and J properties purchased by him under two different sale deeds?
6. Whether the 1st defendant proves that item No.L and M purchased from his mother Chinnamangamma, husband of 2nd defendant and her children under the registered sale deed?
7. Whether the 1st defendant proves that, he has sold the P schedule property to defendant No.7 under registered sale deed dated 13.04.2016?
8. Whether the 1st defendant proves that, he has sold O schedule property to defendant No.3 and 4 for legal necessity?
9. Whether the 1st defendant proves that the plaintiff was given 9 house sites in Block No.2, Khatha No.277/1 to 277/9 of Hanuru village under unregistered relinquishment deed in lieu of her share in the joint family properties?
10. Whether the 1st defendant proves that Oil mill situated in Sy. No.223/1 measuring 0.31 cents is his absolute property?

11. Whether the plaintiff proves that she is entitled for share in the rent derived from P and N properties?

12. Whether the plaintiff is entitled for partition and separate possession of her 1/3rd share by metes and bounds?

13. Whether the defendant No.7 and 8 prove that, suit is barred by law of limitation?

14. What Order or decree?

9. The plaintiff examined as PW1 and got marked the documents at Ex.P1 to P26. The 1st defendant examined as DW1 and got marked Ex.D1 to D9 on confronting to PW1, further marked Ex.D1 to D18 and one witness as DW2. Ex.D1 to D18 shall be read as Ex.D10 to D27.

10. Heard the arguments and perused the oral and documentary evidence available on record.

11. My answer to the above Recasted Issues are as under:

Issue No.1 and 12: In the Affirmative

Issue No.2 to 11 and 13: In the Negative

Issue No.14: As per final order for the following:

REASONS

12. Recasted Issues No.1 to 8, 10, 12: The recasted Issue No.1 to 8, 10, 12 are interconnected, and as such to avoid repetition of facts taken together for discussion.

13. The case of the plaintiff is that, plaintiff, defendant no.1, 2nd defendant and her children defendant no.5 and 6 are inherited the suit properties consisting of agriculture land and dwelling house through Ramakrishna Naidu and Smt.Chinnamangamma. It is the ancestral property of her parents, and father died intestate leaving behind his wife Chinnamangamma, plaintiff, 1st defendant and husband of 2nd defendant Srinivasanaidu. It is further case of the plaintiff that, her father

Ramakrishna Naidu is an agriculturist and he has acquired the suit schedule property under partition and thereafter cultivated the same and he also purchased some properties on behalf of the family. Subsequently mother and son Srinivasanaidu died leaving behind plaintiff, 1st defendant, 2nd defendant and defendant No.5 and 6. During his lifetime he executed Gift deed in favour of his wife in respect of one property and that he died intestate. No partition took place between the family. But she learnt, after the death of the mother, the 1st defendant created documents in respect of the suit schedule properties. Therefore come up with this suit for seeking partition and separate possession of her 1/3rd share over the suit properties against her brother 1st defendant, 2nd defendant and defendant no.5 and 6 and to declare the documents which executed by defendants if any is not binding on her in respect of the properties. She also made alleged subsequent purchasers as defendant no.3, 4, 7 and 8.

14. Per contra it is the contention of the 1st defendant that during the lifetime of parents the suit properties were partitioned, wherein the plaintiff taken her share as per ExD1 to ExD9, and subsequent to partition schedule E, H, G and H were acquired by him and it is his self acquired properties and the P schedule property sold to defendant No;7 under reg sale deed dated 13-4-2016. Hence there exists no ancestral property. And that partition of the year 1993 and sale transaction taken place on 30.03.1995 and 13-4-2016 is not challenged within the period of limitation. Therefore suit is liable for dismissal. Whereas the Defendant no.7 and 8 submitted they are the bonafide purchasers. The defendant no.3 and 4 have not filed their written statements.

15. In order to prove the case the plaintiff examined herself as Pw1 by filing an affidavit in lieu of chief examination and relied as many

as 26 documents. From the documents it is required to see whether the plaintiff has complied mandate provision of order 7 rule 3 of CPC. To prove the existence of Plaintiff A schedule, produced ExP1 which stands in the name of Chinnamangamma, ExP2 refers to B schedule property which stands in the name of Ramakrishna Naidu, ExP4 refers to C schedule property stands in the name of Ramakrishna Naidu, ExP5 refers to D schedule property, which stands in the name of Chinnamangamma, **Ex.P6 refers to K schedule bg.Sy.No.220/B1c stands in the name of one Mahadevashetty s/o Manchashetty, who is not a party to the suit measuring 0.60 cents (Akrama sakrama). This property is not pertaining to suit schedule property.** Ex.P7 refers to E schedule stands in the name of 1st defendant, ExP8 refers to F schedule in S.no.223 which stands in the name of 1st defendant, the said property not included in the plaintiff schedule, ExP9 refers to G schedule standing in the name of 1st defendant, ExP10 refers to H schedule standing in the name of 1st defendant, ExP11 refers to 'I' schedule standing in the name of 1st defendant, ExP12 refers to 'J' schedule standing in the name of 1st defendant, ExP13 is refers to K schedule standing in the name of 1st defendant, ExP14 refers to L schedule standing in the name of 1st defendant, ExP15 refers to M schedule standing in the name of 1st defendant, ExP3 refers to P schedule which stands in the name of Ramakrishna Naidu. Ex.P25 is the Certificate issued by the Town Panchayath, Hanuru. It is not clarified which of the suit schedule property refers to Ex.P25. Ex.P26 is the RTC pertaining to C suit schedule property. Though no document is produced to prove the existence of N schedule property the first defendant in his written statement at para 11 admitted the existence of N schedule property as it is acquired under oral partition.

16. Before proceeding further, it is apt to have an understanding of the concept of ancestral property in a nutshell. Any property inherited up to four generations of male lineage from the father, father's father or fathers' father's father I,e father, grand father etc is termed as ancestral property. The ancestral property accrues to the coparcener from birth. At this juncture it is to be examined as to whether the plaintiff is entitled to claim partition in ancestral property in view of the amendment?. Then only further determination of dispute would arise. Prior to the amendment it was only the male who would have been coparcener and entitled to claim the partition and share from the joint family property. On the other hand daughter did not have any right of partition and to claim share in the ancestral property since she was not a coparcener. At the most, at the time of partition she could only ask for reasonable maintenance and marriage expenses. In order to give equal position to the females in ancestral property the amendment is brought to the Hindu Succession Act 1956. As such plaintiff being the daughter entitled to claim share in the ancestral property of father.

17. It is undisputed fact that Sri Ramkrishna Naidu, father of the plaintiff had only ancestral properties and he did not left behind any self acquired property and it is also not in dispute the relationship between the plaintiff and defendant no.1,2,5 and 6. It is urged that suit properties item no.A to P not subjected for partition at any point of time during the life time of father and mother.

18. It is the definite case of the 1st defendant that suit properties orally partitioned during the life time of parents itself in the year 1993. In the affidavit filed in the form of examination in chief the Pw1 stated she and her brothers have not partitioned the suit property. She has been subjected to a lengthy cross examination but it is found that she has not

been discredited. And many questions are in the form of suggestions. Which are denied by her and as such they are of no use.

19. The 1st defendant examined himself as Dw1 by filing affidavit in lieu of chief examination and got marked ExD1 to 18. Prior to examining himself through Pw1 got marked ExD1 to 9. Therefore ExD1 to 18 which marked through Dw1 shall be read as ExD10 to 27. The Dw1 in chief asserts his possession over suit property but in cross examination he has given evasive answer, having admitted the suit properties are the ancestral properties of himself and plaintiff, 2nd defendant and when it is his specific case that there was oral partition, in order to avoid complication arising in the future would have taken her signature in the application filed for transferring khata from the name of parents to his name. Admittedly he has not taken the signature of plaintiff.

20. The evidence on record shows the properties are ancestral and that plaintiff and defendant no.1,2,5, and 6 are the sharers in the natural course. The next aspect is about oral partition which is a special feature of Hindu law. Here what is required is strict proof. If memorandum of partition is available, it must be produced and proved. Besides it must be proved that oral partition has been acted upon, What can be deciphered from the Sec 6 of Hindu Succession. Although explanations to sub-section (5) of Sec 6 requires partition effected before 20-12-2004 to be registered all valid oral partitions and effected before the said date remain unaffected. But such oral partition cannot be simply considered. The party relying upon oral partition must strictly prove it. The court required to scrutinize the evidence with regard to oral partition with great circumspection in order to rule out the possibility of forgery and bogus transactions of partition. In entire cross

examination of Pw1 no single suggestion is put that in the year 1993 alleged oral partition took place during the life time of father, and those are the properties allotted to mother, brothers and sister, and any such property retained by the father.

Per contra it is suggested to Pw1 ನನ್ನ ಅಣ್ಣದಿಯ ಪ್ರತ್ಯೇಕವಾದ ಮೇಲೆ ದಾವಾ ಸ್ವತ್ತುಗಳನ್ನು ಅವರವರ ಹೆಸರಿಗೆ ಪ್ರತ್ಯೇಕವಾಗಿ ಖಾತೆ ಮಾಡಿಸಿಕೊಂಡಿದ್ದರು ಎಂದರೆ ಸರಿಯಲ್ಲ.

21.This line of suggestion clarifies that no any partition took place between them, on the other hand they themselves get the khatha transferred into their name as well as in the name of plaintiff as per their whims and fancy. It is not brought out in the evidence that in the year 1999 Plaintiff has come down to Kollegala from Coimbatore to sign the alleged Relinquishment Deed and application filed for changing khatha.

22. No doubt, the suggestion put by the defendant no.1 to Pw1 is admitted as below;

ಪ್ರಸ್ತುತ ಒಟ್ಟು ಕುಟುಂಬದ ಆಸ್ತಿ ಯಾವುದೂ ಉಳಿದಿಲ್ಲ ಎಲ್ಲರೂ ಅವರವರ ಭಾಗಕ್ಕೆ ಬಂದಂತಹ ಆಸ್ತಿಗೆ ಸಂಬಂಧಿಸಿದಂತೆ ಅವರವರ ಹೆಸರಿನಲ್ಲಿ ಖಾತೆ ಮಾಡಿಸಿಕೊಂಡಿದ್ದಾರೆ ಎಂದರೆ ಸರಿ.

23. But that evidence will not come to the aid of defendants. Because it is not specifically suggested to PW1 that she too taken her share and got transferred khata into her name. And in her further evidence dated 4-7-2022 she specifically denied the division of the suit properties between them.

24.On the other hand, Dw1 admitted during his cross examination dated 19.06.2023 at 2nd page stated, the portion is extracted is as under:

ಈ ದಾವೆಯಲ್ಲಿ ತೋರಿಸಿರುವ ಎಲ್ಲಾ ಆಸ್ತಿಗಳನ್ನು ಬೇರೆಯವರಿಗೆ ಮಾರಾಟ ಮಾಡಿರುವುದಿಲ್ಲ ಎಂದರೆ ಸರಿ. ಈ ದಾವೆಯಲ್ಲಿ ತೋರಿಸಿರುವ ಎಲ್ಲಾ ಆಸ್ತಿಗಳು ನನಗೆ ಮತ್ತು ಮೃತ ನನ್ನ ತಮ್ಮ ಹಾಗೂ ನನ್ನ ಸಹೋದರಿಗೆ ಪಿತ್ರಾರ್ಜಿತ ಆಸ್ತಿಗಳು ಎಂದರೆ ಸರಿ. And she spoke out the truth stating ನಾನು

ಮತ್ತು ನನ್ನ ನಾದಿನಿ ಭಾಗ ಮಾಡಿಕೊಳ್ಳುವಾಗ ನನ್ನ ತಂಗಿ ಸಂಸ್ಥಿತಿಯನ್ನು ಕೇಳಿರುವುದಿಲ್ಲ. ಆಕೆಗೆ ಭಾಗದ ಬಗ್ಗೆ ತಿಳಿಸಿರುವುದಿಲ್ಲ. ನಾನು ಮತ್ತು ನನ್ನ ನಾದಿನಿ ಭಾಗ ಮಾಡಿಕೊಂಡಿರುವ ಬಗ್ಗೆ ದಾಖಲೆ ಇರುವುದಿಲ್ಲ.

25. From this piece of evidence clarifies that no such oral partition taken place between the father and children, if any partition it is in between 1st defendant and 2nd defendant partitioned the suit properties without the consent and knowledge of the plaintiff. If there was oral partition in the year 1993 DW1 could have deposed the father had partitioned the suit property. This evidence falsifies the very defence taken by the 1st defendant that there was oral partition took place in the year 1993 and his father had partitioned the properties to the wife and children. Even for the worst if there was partition in the year 1993 occasion would not have arosed to file suit by the mother and daughter as per OS 73/2014. Where at undisputed point of time averred there was no partition took place of the properties left by the father Ramakrishna Naidu. Thereby the defendants have failed to establish A, B, D, F, I, K, N, O schedule properties acquired under oral partition. Therefore sale deed executed by the 1st defendant and 2nd defendant in favour of defendant No.3 and 4 in respect of O schedule property under sale deed dated 16.03.2016 as per Ex.P21 is not binding on the share of plaintiff. So also sale deed executed by the 1st defendant in favour of defendant No.7 and 8 as per Ex.P22 on 13.04.2016 in respect of P schedule property E-W 34 feet and S-N 134 feet totally measuring 4556 sq.feet site situated at Hanuru town, Kollegala Taluk is not binding on the share of plaintiff.

26. Now coming to the another defence taken by the 1st defendant that E, H, G, J, L, M properties are the self acquired property of the 1st defendant is concerned, DW1 himself admitted during cross examination that he was doing cultivation in the suit property and

except the income received from the agriculture property he has no other independent income or other source of income to purchase the property. Dw1 had not stated he had any independent income to purchase the properties in his name .Therefore in the absence of producing any documents as to source of income to purchase E, H, G, J, L, M properties out of his own income or earnings it has to be treated as joint family properties and no division took place so far of that properties. Therefore, sale deed dated 30.03.1995 executed by Nanjashetty in respect of E schedule bg.Sy.No.224/D measuring 82 cents and in H schedule bg.Sy.No.220/A measuring 2 acres 21 cents executed in favour of 1st defendant is not binding on the share of the plaintiff.

27.The 1st defendant in support of his defence taken also examined the witness as DW2 who stated to be relative of plaintiff and defendant no;1,2,5 and 6. In the chief examination though he deposed consistently as that of the evidence of Dw1 during his cross examination he given totally go by to his evidence in chief.

28.The Dw2 deposed in his cross examination dated 16.09.2023, the portion is extracted as under:

ವಾದಿಯು ಯಾವ ಯಾವ ಸ್ವತ್ತುಗಳಿಗೆ ಸಂಬಂಧಪಟ್ಟಂತೆ ಈ ದಾವೆಯನ್ನು ಹೂಡಿರುತ್ತಾರೆಯೆಂದು ನಾನು ತಿಳಿದುಕೊಂಡಿರುವುದಿಲ್ಲ. ನನ್ನ ಮುಖ್ಯ ವಿಚಾರಣೆಯ ಸಾಕ್ಷ್ಯ ಪ್ರಮಾಣ ಪತ್ರದಲ್ಲಿ 9 ಸೈಟುಗಳ ಬಗ್ಗೆ ಬರೆಸಿರುತ್ತೇನೆಂದರೆ ಸರಿ. ಸದರಿ ಸೈಟುಗಳು ಹನೂರಿನಲ್ಲಿರುತ್ತವೆ. ಸದರಿ ಸೈಟುಗಳ ನಂಬರು ಹೇಳಲು ನನಗೆ ನೆನಪಿರುವುದಿಲ್ಲ. ಸದರಿ 9 ಸೈಟುಗಳ ದಾಖಲೆಗಳು ಮತ್ತು ಅವುಗಳು ಯಾರ ಹೆಸರಿನಲ್ಲಿರುತ್ತವೆ ಎಂದು ನಾನು ದಾಖಲೆಗಳನ್ನು ನೋಡಿರುವುದಿಲ್ಲ. ಸದರಿ 9 ಸೈಟುಗಳನ್ನು ಈ ದಾವೆಯಲ್ಲಿ ದಾವಾಸ್ವತ್ತುಗಳಾಗಿ ಸೇರಿಸಿರುವ ಬಗ್ಗೆ ನಾನು ತಿಳಿದುಕೊಂಡಿರುವುದಿಲ್ಲ. ರಾಮಕೃಷ್ಣನಾಯ್ಡುರವರು ವಿಭಾಗ ಮಾಡಿಕೊಂಡಿರುವ ತಿಂಗಳು ಮತ್ತು ವರ್ಷ ನನಗೆ ಹೇಳಲು ಬರುವುದಿಲ್ಲ. ರಾಮಕೃಷ್ಣ ನಾಯ್ಡುರವರಿಗೆ ಸುಮಾರು 20 ಎಕರೆ ಜಮೀನು ಮತ್ತು ಒಂದು ಮನೆ ಇತ್ತು. ಎಷ್ಟು ಸೈಟುಗಳು ಇದ್ದವು ಎಂದು ನನಗೆ ಗೊತ್ತಿರುವುದಿಲ್ಲ.

29. His evidence is not supporting the case of 1st defendant in proving there was any oral partition in the year 1993 and plaintiff was

given any share in the ancestral property. The 2nd defendant has not contested the suit. Therefore it implies she admits the claim of the plaintiff.

30. The Dw1 produced Ex.D1 to 18 (Ex.D10 to D27), wherein Ex.D1 is the M.R.extract pertaining to E and H schedule properties which was purchased by him from one Nanjashetty as per sale deed dated 30.03.1995. Ex.D2 which is sale deed dated 24.10.1994 executed by one Chowdamma and her children in favour of 1st defendant pertaining to G schedule and Sy.No.220/A2 measuring 75 cents, Ex.D3 is the sale deed dated 01.02.2008 executed by Chinnamangamma, Srinivasanaidu and his minor children in favour of 1st defendant in respect of M schedule (bg.Sy.no.168) and 222/D measuring 2 acres 2 cents (part of E schedule), Ex.D4 pertaining to sale deed dated 30.03.1995 in respect of Sy.No.220/A measuring 2 acres 21 cents in respect of H schedule, Ex.D5 pertaining to A schedule, Ex.D6 pertaining to s.no.223 of F schedule standing in the name of 1st defendant, Ex.D7 pertaining to sy.no.222/D2 standing in the name of 1st defendant not included in the suit schedule, Ex.D8 pertaining to G Schedule standing in the name of 1st defendant, Ex.D9 pertaining to H schedule standing in the name of 1st defendant, Ex.D10 pertaining to M Schedule standing in the name of 1st defendant, Ex.D11 pertaining to J Schedule standing in the name of 1st defendant, Ex.D12 pertaining to K Schedule standing in the name of 1st defendant, Ex.D13 pertaining to I schedule standing in the name of 1st defendant, Ex.D14 pertaining to E schedule standing in the name of 1st defendant, Ex.D15 is the M.R.extract pertaining to K schedule and Sy.No.222/D measuring 1 acre 10 cents, Sy.No.223 measuring 2 acres and Sy.No.224/C measuring 20 cents, these properties not included in the plaint

schedule. Ex.D16 is the M.R. extract pertaining to Sy.No.223 khatha transferred from Chinnamangamma to 1st defendant, not included in plaint schedule. Ex.D17 is the Mutation extract pertaining to A schedule standing in the name of 1st defendant, 2nd defendant and Chinnamangamma, Ex.D18 is a sale deed dated 11.04.2008 executed by Chinnamangamma, 1st defendant and his minor children, Srinivasanaidu and his minor children and plaintiff in favour of Subbaraju.

31.Among the said document Ex.D18 is said to be executed by defendant no.1 and his minor children, his mother Chinnamangamma and, Srinivasanaidu and his minor children, i.e defendant no.5 and 6, and plaintiff Saraswathy. But on careful going through the signature of plaintiff in ExD18 and plaint, it appears the plaintiff puts signature as **Saraswathy**, whereas in Ex.D18 signature is put as **Saraswathi**. Further from bare eyes makes out the difference in strokes of the letters. As such it appears the defendants No.1 and others by forging the signature of plaintiff executed the sale deed in favour of Subbaraju of the C schedule property. As such, the sale deed dated 11.04.2008 in respect of item No.C property in favour of Subbaraju is not binding on the share of plaintiff.

32. Further, since the mother of Chinnamangamma died intestate the plaintiff too is entitled to in the share of the property gifted to Chinnamangamma by the father in Sy.No.223/1. As such it cannot be contended that the defendant No.1, 2 and 5 and 6 are inherited the property Bg.sy.No.223/1 by them, and Oil mill situated in Sy. No.223/1 measuring 0.31 cents is the absolute property of 1st defendant as Ex.P16 does not disclose as to under which document the Chinnamangamma transferred the said property to the first defendant.

33. Therefore looking from any angle the defendants failed to establish there was partition in the year 1993 which took place within the knowledge and consent of plaintiff and in the said partition the plaintiff was given any share and E, H, G, J, L, M, N properties are the self acquired property of 1st defendant. Therefore the sale deed executed in favour of the 1st defendant is not binding on the plaintiff.

34. The learned Counsel for defendant No.1 has relied on the decision reported in **AIR 1999 KANT 421**. It is observed whenever order VII Rule 3 is violated and particulars are absent in a plaint, the plaint shall be rejected and ought not to have been numbered. Where it is also observed the opportunity shall be given to the parties to get it amended. Here the 1st defendant either in written statement or his evidence stated that the plaintiff committed mistake in mentioning the boundary. On the other hand Dw1 himself admitted all the suit properties are ancestral properties. Thereby indirectly admits the existence of the properties with the boundary stated in the plaint.

35. The contention of the 1st defendant that the plaintiff has not placed all necessary documents is not tenable in the light of the 1st defendant's admission of the existence of the suit schedule property. The defendants admission simplifies the matter, making further documentary evidence from the plaintiff redundant for the purposes of determining the right to partition.

36. Order 7 R 3 of CPC requires the plaintiff to provide a sufficient description of the property to identify it. In the present case, the plaintiff's failure to place additional documents is not fatal to the case as the primary facts needed for partition are admitted by the 1st defendant. Therefore the contention that the plaintiff has not complied with Order VII rule 3 of CPC is not sufficient to deny relief.

37. Based on the admissions by the defendants, the suit properties are established as ancestral properties. The plaintiff also established her right to seeking share in the suit properties. The claim of the oral partition in 1993 lacks documentary evidence and thus cannot be considered as valid. The defendant No.1's contention of having self-acquired E, H, G, J, L, M properties is unsubstantiated. The entire property remains ancestral. The defendants failed to provide evidence of a legal necessity for a sale of any part of the suit properties, hence such sale of properties as per Ex.P21, 22, 23, cannot be validated under the claim of the legal necessity. Since the defendant no.1,2 are failed to prove the alleged oral partition, the plaintiff become entitled for partition and separate share over the suit properties. The division of family property typically follows a two step process, a preliminary decree to determine the shares of the parties and a final decree to actually divide the property. If additional property is identified during the final decree proceedings it may be possible to include and divide it among the sharers. Therefore **I answer recasted Issue No.1 and 12 in the Affirmative, Issue No.2 to 6, 8 in the Negative.**

38.Recasted Issue No.9: It is the definite case of the 1st defendant that suit properties orally partitioned during the life time of parents itself in the year 1993 and in which the plaintiff too given some properties more fully described in ExD1 to 9 under unregistered Relinquishment Deed dated 20-4-1999. Which she denied during her cross examination stating she is not allotted any property much less property one stated in Ex.D1 to 9. Ex.D1 to D9 are the panchayath Demand Register extract standing in the name of plaintiff pertaining to second block property No.277/1 to 277/9. A Panchayath Demand register extract typically records land revenue payments and other

related details but does not survive definite proof of ownership or title to the property. The demand register is more of an administrative record for tax purposes and does not establish legal rights or ownership.

39. Though PW1 admitted ExD1 to 9 on confronting the documents to her by the counsel for 1st defendant that it does stand in her name, she volunteered she does not know how her name came in those records. It is the say of defendant no.1 that the original Relinquishment Deed is with plaintiff. If so he could have produced the Photostat copy of the same but 1st defendant has not made any effort to produce the same if really any such document is existing. If not he could have produced MR extract which would disclose how the name of the plaintiff entered in those tax demand register extract. Except the tax demand register Extract he has not produced any other document to show she was given properties as per Ex.D1 to D9 in partition. Further not sought the court to include the said properties in the plaint schedule by furnishing title deeds and boundaries to that effect. If any such property existing and allotted to plaintiff in the partition definitely he would have moved an application for seeking incorporation of those properties. More over during cross examination the DW1 deposed he does not know when the alleged Relinquishment Deed was executed and what is the amount of stamp paper purchased. Therefore adverse inference has to be drawn that no such properties given to the share of plaintiff in the alleged partition. The ExD1 to 9 do not prove, particularly in the tax demand extract based on the alleged Relinquishment Deed.

More over the DW1 himself admits during his cross examination that,

ವಾದಿಗೆ 9 ನಿವೇಶನಗಳನ್ನು ನೀಡಿರುವುದಾಗಿ ತಿಳಿಸಿರುತ್ತೇನೆ ಎಂದರೆ ಸರಿ. ಆದರೆ ಸಂಖ್ಯೆ 277/1 ರಿಂದ 277/9 ಆಗಿರುತ್ತದೆ. ಆ ಬಗ್ಗೆ ತೋರಿಸಲು ದಾಖಲಾತಿಗಳನ್ನು ಹಾಜರುಪಡಿಸಿಲ್ಲ ಎಂದರೆ ಸರಿ. ಈ ದಾವೆ ಜಾರ್ಜಿಯಲ್ಲಿರುವಾಗಲೇ ಕೆಲವು ನಿವೇಶನಗಳನ್ನು ಮಾರಾಟ ಮಾಡಿರುತ್ತೇನೆ ಎಂದರೆ ಸರಿ.

40. If it was given to plaintiff how could the 1st defendant and 2nd defendant sell the said house site to any other person as per Ex.P21? There is no any evidence that plaintiff has transferred even those house sites to him. Further with regard to the above specific contention taken by the 1st defendant, the oral evidence of Dw1 does not any way establish the execution of Relinquishment deed at the time of alleged oral partition in favour of plaintiff. If really Relinquishment Deed if any, that should have been made through registered instrument. But no such document executed or produced. Hence mere oral testimony of the 1st defendant would serve no purpose and could not even be considered.

41.The learned counsel for 1st defendant placed the reliance reported in **ILR 1998 KAR 681** in between **Sri.Tukaram Vs Sri M Sambhaji & Ors** to the effect partial partition is not maintainable. But here in the case though plaintiff admitted of mentioning her name in ExD1 to 9 on confronting the said document to her, she denied no such property is given to her and she does not know how her name entered in the said property. Further except the tax demand register extract 1st defendant has not produced any other document showing the existence of the property with proper boundary. When she denied giving of said properties to her, it is the duty of the 1st defendant to move an application for seeking incorporating those properties with proper boundaries. Therefore the principle laid down cannot be made applicable to the present case. Therefore Issue No.9 answered in the Negative.

42. Recasted Issue No.11: The plaintiff has stated in para 3 A of the plaint that, P and N schedule properties are let out by the 1st defendant for rent. Therefore she is also entitled to receive share in the said rent derived. It is nobody's case that the 1st defendant rented P and N schedule house to any tenant and receiving any rent out of it. Therefore in the absence of any oral and documentary evidence to that effect the plaintiff is not entitled to seek any relief. Therefore, **I answer recasted Issue No.11 in the Negative.**

43. Recasted Issue No.7 and 13: Defendant no.7 and 8 contended that their vendors have affirmed that the aforesaid facts are true and correct by way of signed declaration by the vendors. The vendors of this 7 and 8th defendants have got the khata of the said property. It is contended the plaintiff was given her share in the partition as such she cannot claim any sort of right, title or interest in the property sold to them and stated the plaintiff is attempting to grab the property legitimately purchased by this defendant no.7 and 8. It is further contended the defendant no.7 and 8 are a bonafide purchaser of the P schedule property, having purchased the property on 13.4.2016 on the representation made by their vendors of being the absolute owners of the said property, and further after scrutinizing the documents and being satisfied as to the title of this vendors paid valuable consideration and therefore the plaintiff has no locus standi to question the sale deed executed in favour of them, and has no ground to file this suit and it is barred by limitation. But to substantiate the contention taken in the written statement the defendant No.7 and 8 are not examined before the Court. Further, sale deed dated 13.04.2016 said to have been executed by the 1st defendant in favour of defendant No.7 and 8 have not produced before the Court for perusal it is

produced and marked through plaintiff as Ex.P22. On the other hand, it is already discussed above that the property one said to be sold by the 1st defendant and 2nd defendant to defendant No.7 and 8 is the joint family property of the plaintiff and defendant No.1, 2, 5 and 6. The defendant no;7 and 8 are strangers to the plaintiff and 1st defendant's family as such they have locus-standi to question the right to partition of the plaintiff in the suit property.

44. Coming to the limitation, at the first place the 1st defendant failed to prove in the year 1993 partition took place. Further there is no proof to prove dispossession of Plaintiff from the suit properties, and the 1st defendant failed to plead and prove ouster. On the other hand the Plaintiff taken initiation to file the suit in the year 2014 itself. After the death of her mother she withdrawn that suit and filed the present suit by including left over ancestral properties. Further in respect of the sale deed executed in favour of 7th and 8th defendant are concerned the sale deed is executed on 13.04.2016 that is after the cut of period of 20-12-2004 of Sec.6 of Hindu Succession Act, and therefore same is not binding on her. Therefore suit filed by the plaintiff is in time. Hence I **answer recasted Issue No.7 and Issue No.13 in the Negative.**

45.Recasted Issue No 14: In view of answering recasted Issue No.1 and 12 in the Affirmative and recasted Issue No.2 to 11 and 13 in the Negative, I proceed to pass the following.

ORDER

Suit of the plaintiff is decreed with cost.

The plaintiff is entitled for partition and separate possession of her 1/3rd share over the suit schedule properties by metes and bounds.

The defendant no.1, defendant no.2, 5 and 6 together are entitled for partition and separate possession of their 1/3rd each share over the suit properties.

The Ex.P21 to Ex.P23 and Ex.D2, Ex.D3 and Ex.D4 are not binding on the plaintiff.

Draw preliminary decree.

(Dictated to the Stenographer directly on the Computer, typed by him, corrected and then pronounced by me in the Open Court on this the 9th day of August 2024)

(SUNITHA)
Senior Civil Judge & J.M.F.C.,
Kollegala.

ANNEXURE

List of Witnesses examined for the Plaintiff:

PW-1: Smt.Saraswathi

List of Documents marked on behalf of the Plaintiff:

Ex.P1 to Ex.P15: RTCs.,

Ex.P16: CC Judgment in O.S.No.73/2014

Ex.P17: I.A. IV in O.S.No.73/2014

Ex.P18: Objection to I.A. IV in O.S.No.73/2014

Ex.P19: Copy of plaint in O.S.No.73/2014

Ex.P20: Objection in O.S.No.73/2014

Ex.P21 & 22: Sale deeds

Ex.P23 : CC of Sale deed

Ex.P24 : Reg. Gift deed

Ex.P25 : Certificate

Ex.P26 : RTC

List of Witnesses examined for the Defendants:

DW1: R.Ravinaidu

DW2: R.Nagarajanaidu

List of Documents marked on behalf of the Defendants:

Ex.D1 to D9 : RTCs.

Ex.D10 : Mutation Register extract.

Ex.D11 : Certificate

Ex.D12 & D13 : Sale deeds
Ex.D14 to D23: RTCs.
Ex.D24 to 26: Mutation Register extracts.
Ex.D27: Sale deed.

(SUNITHA)
Senior Civil Judge & J.M.F.C.,
Kollegala.

Mksr/*

(Vide separate Judgment pronounced in the Open Court)

ORDER

Suit of the plaintiff is decreed with cost.

The plaintiff is entitled for partition and separate possession of her 1/3rd share over the suit schedule properties by metes and bounds.

The defendant no.1, defendant no.2, 5 and 6 together are entitled for partition and separate possession of their 1/3rd each share over the suit properties.

The Ex.P21 to Ex.P23 and Ex.D2, Ex.D3 and Ex.D4 are not binding on the plaintiff.

Draw decree preliminary decree.

Senior Civil Judge & J.M.F.C.,
Kollegala.