

IN THE COURT OF THE CIVIL JUDGE AND JMFC

AT YELANDUR

Present : **SRI MADHUSUDHANA D.K. B.A., LL.B.,**
Civil Judge and J.M.F.C, Yelandur

Dated : This 25th day of July 2015.

O.S.No. 17/2008

- Plaintiffs :**
1. Papanna @ Papanni S/o Mallappa,
Aged about 30 years.
 2. Naganna S/o Veerabhadrappa,
Aged about 42 years.
Residing at Gangavadi village,
Chamarajanagar Taluk.
 3. Sundramma D/o Mallappa & Shivamma,
Aged about 24 years.
Plaintiff No. 1 and 3 are the residing at
Yaragamballi village, Yelandur Taluk.
 4. Puttathayamma D/o Mallappa & Shivamma,
W/o Puttabasappa,
Aged about 28 years,
Residing at Kempanapura village,
Chamarajanagar Taluk.
(By Advocate - Sri K.B. Shivarudrappa)

V/s

Defendants : 1. Mahadevappa S/o Kamma
W/o Late Channurappa,
Aged about 67 years.

2. Eranna D/o 1st Defendant,
Aged about 62 years,

Both are residing at Gangavadi village,
Santhemarahalli Hobli,
Chamarajanagar Taluk.

3. Manju D/o Late Chandramma
W/o Mahadevappa,
Aged about 10 years, minor,
Represented by guardian father
Mahadevappa, residing at Faisary colony,
Nagoclu, Kodagu District.

(By Advocate - Sri B.M. Mahadevaswamy)

Date of Institution of Suit : 19.04.2008

Nature of the suit (suit on pronote, suit
for partition declaration and possession
suit for injunction etc., : Partition and
Separate
Possession

Date of the commencement of recording
of the evidence : 10.02.2010

Date on which the Judgment was pronounced : 25.07.2014

Total Duration	Years	Month	Days
	07	03	06

(MADHUSUDHANA D.K.)
Civil Judge & JMFC.,
Yelandur.

JUDGMENT

This suit is filed by the Plaintiffs against the Defendants seeking the relief of partition and separate possession of their 1/4th share together in respect of Plaintiff No. 1, 3, 4 and Defendant No. 3(a) and 1/4th share to the 2nd Plaintiff and for mesne profits in the agriculture lands in Yarangamballi and Bettahalli villages.

2. The case of the Plaintiffs is as follows:

The item No. 1 of the suit schedule properties is the ancestral property purchased and owned by Agarada Madappa, the grand father of Plaintiffs and Defendants. Said Madappa has purchased the item No. 2 under a registered sale deed dated 14.11.1915 and he was in lawful possession and enjoyment till his death. Madappa had only two daughters by name Kamma and Shivamma and both of them have jointly purchased item No. 2 under a registered sale deed on 25.11.1934 and both of them were in possession.

3. Kamma married one Chennurappa and they have two sons by name Mahadevappa (1st Defendant) and another son Eranna (2nd Defendant). Madamma was given in marriage to one Veerabhadrapa and both of them had one son Naganna and one daughter Shivamma. Both Madamma and Veerabhadrapa and Kamma are died. Naganna is the 2nd

Plaintiff in the suit. 2nd daughter of Agarada Madappa by name Madamma has got the Shivamma has her daughter and married Shivamma to one Mallappa. Shivamma and Mallappa have got a son by name Papanna, the 1st Plaintiff and daughters Sundaramma, Chandramma and Puttathayamma (4th Plaintiff). Among them Chandramma was died and Defendant No. 3(a) is her daughter and legal representative. Here the Plaintiffs have given their genealogical tree.

4. The Plaintiffs have contended that, after the demise of Agarada Madappa, his two daughters Kamma and Madamma are entitled to half property each in the item No. 1 and now both the daughters of Agarada Madappa and his son-in-laws are no more and therefore, the two branches of the genealogical tree are having equal shares. Accordingly Defendant No. 1 and 2 have got half share and Shivamma and

Naganna are having half share in the properties. Shivamma's 1/4th share out of the both properties, the 1st Plaintiff, 3rd Plaintiff and Defendant No. 4 and 3(a) together are entitled for 1/4th share.

5. The suit schedule properties are in joint possession and enjoyment of the parties and all of them are having constructive possession and enjoyment over the entire properties. The Plaintiffs came to know that, the 1st Defendant is making efforts to get the khatha changed in his sole name and therefore, Plaintiffs and Defendant No. 3(a) have demanded for the partition.

6. The 1st Defendant has filed a suit for injunction against Plaintiff No. 1 and 2 and Nagamma in respect of item

No. 1 in OS No. 18/2005 and obtained Decree by suppressing actual facts and therefore, Plaintiffs have filed the suit.

7. The cause of action stated to have arose before three years and recently about one month prior to the suit when the Plaintiffs have convened panchayath seeking partition. The suit is valued under Section 35(2) of K.C.F. and S.V. Act and prayed for the Decree.

8. The Defendant No. 1 to 3 appeared and the Defendant No. 1 has filed the written statement and same is adopted by the Defendant No. 2 and 3. In the written statement the Defendants have contended that, the case of the Plaintiffs pleaded in the plaint are partial truth and partial false hood. They have submitted their case from para 11 as follows:

9. Agarada Madappa was the younger brother of Agarada Madamma and Madamma was given in marriage to Kallipura village and she died without issues. After her husband's death, Madamma started to reside in Gangavadi village. Agarada Madappa had two daughters were Kamma and Mamma. Kamma was married to Chennurappa and the Defendant No.1 and 2 are the sons of said Kamma couple. The guardian of 3rd Defendant is the son of 1st Defendant. Except the Defendant No. 1 to 3 above stated Agarada Madappa, his sister, Kamma and Chennurappa were died long back.

10. The 2nd daughter of Agarada Madappa by name Mamma was married to Veerabhadrapa and they have got Naganna (2nd Plaintiff) and Shivamma as son and daughter. Shivamma was married to Mallappa of Yaragamballi. The

Plaintiff No. 1, 3, 4 and mother of 3rd Defendant by name Sundaramma are children of above stated Shivamma. Except these persons, the ancestors of Plaintiffs are no more.

11. The suit schedule properties exclusively belong to the family of the Defendants and Sy. No. 378/2A measuring 2 acre 22 guntas and Sy. No. 378/1C measuring 26 guntas are the self acquired properties of Defendant No. 1 and 2's mother Kamma. Kamma had acquired them under a Government bid. Another property Sy. No. 378/2B belongs to the father of Defendant No. 1 and 2 by name Chennurappa who acquired the same in his family division. Therefore, Defendants are in its continuous possession and enjoyment and Plaintiffs and Defendant No. 3(a) have not got any right over the same.

12. It is also contended that, in the mean time for some years the khatha of said property stood in the name of Puttasubbappa the relative of Agarada Madamma elder sister of Agarada Madappa. The khatha was changed from the name of Puttasubbappa to the name of 1st Defendant and for these reasons, Plaintiffs are not having any interest over the property. The Defendants admitted of filing OS 10/2005 and they further contended that, this suit is it by Order 2 Rule 2 of CPC and without seeking declaration in respect of OS 10/2005 the suit is not maintainable and barred by limitation. Therefore, the Defendants prayed for dismissal of the suit.

13. On the basis of pleadings, my predecessor in office has framed the following issues:

1. *Whether the Plaintiffs prove that the Plaintiffs, their ancestors and the Defendants are the joint family member?*
2. *Whether the Plaintiffs prove that the suit schedule properties are the joint family properties of the plaintiffs and the Defendants?*
3. *Whether the Defendants prove that the suit schedule properties are their private properties?*
4. *Whether the Plaintiffs prove that they are entitle for partition and separate possession of the suit schedule properties of 1/4th share?*
5. *Whether the Plaintiffs are entitle for mesne profits?*

6. *What Order or decree?*

14. In support of their case, Plaintiffs have examined 1st Plaintiff as PW1 by way of affidavit and got marked Ex.P1 to Ex.P10. On the other hand the Defendants have examined 1st Defendant Mahadevappa as DW1 but no documents are marked by the Defendants.

15. I have heard arguments of the rival parties and perused the material on record. My answers to the above issues will be as under:

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 : In the Negative

ISSUE No.6 : As per the final order for the following:

R E A S O N S

16. ISSUE No.1 and 2 : These two issues are inter linked and therefore, to avoid repetition of reasoning, both are discussed together. The careful reading of plaint and the written statement and comparing genealogical trees produced by Plaintiffs and Defendants, the parties have admitted the relationship almost as pleaded in the plaint by the Plaintiffs.

17. The specific contention of the Defendant No. 1 to 3 is that, suit schedule properties are self acquired property of mother of Defendant No. 1 and 2 by name Kamma and they have also contended that, Kamma has purchased the property in a government bid. On the other hand, the Plaintiffs have pleaded that, originally suit schedule properties were acquired by the propositus Agarada Madappa by way of purchasing them and both daughters of Agarada

Madappa by name Kamma and Madamma have purchased those properties under registered sale deed dated 25.11.1934.

18. In support of the Defendants contentions, they have not produced any documents but the Plaintiffs have produced Ex.P1 to Ex.P10. The Ex.P1 is the certified copy of the sale deed dated 25.11.1934 which speaks that, on the said date daughters of Agarada Madappa by name Kamma and the then minor daughter Madamma have purchased the property from one Yakoob sab S/o Khadar sab for Rs. 50/-. The Ex.P2 is the certified copy of the mutation register standing in the name of 1st daughter Kamma and the mutation entry say that Kamma was died and therefore, the khatha standing in her name has been changed to her eldest son. The Ex.P3 to Ex.P6 are the RTCs standing in the name of 1st Defendant and the occupation manner is entered as inheritance in Column No. 10

of the RTCs. The Ex.P7 is the Akarbandh of Yaragamballi village standing in the name of Agarada Madappa's daughter Kamma. The Ex.P8 is the death certificate of Shivamma and Ex.P9 is the genealogical tree of Agarada Madappa issued by the Village Accountant. The Ex.P10 is the certified copy of the sale deed dated 14.11.1915.

19. From these documents, the Plaintiffs have shown that, both the daughters of Agarada Madappa have purchased the suit schedule properties under a sale deed and at the time of purchase youngest daughter Madamma was a minor. The Ex.P2 mutation entry shows that, after the death of Kamma, khatha was entered in the name of 1st Defendant as elder of the family. The DW1 in his cross-examination at page 5 deposed as follows:

I do not know who is Boodithittu Karaga odeyar's son Madaiah. If it is suggested that, Agarada Madappa was the son of above stated person, my answer is I am not aware of. I do not know that, Agarada Madappa was my grand father. I do not know Kuderu Odeyar Veerathappa's son Veerathappa has executed sale deed Ex.P10 on 14.11.1915. I do not know that, item No. 1 is the property mentioned in the Ex.P10. I do not know that at the time of execution of Ex.P10, the item No. 1 was recognized as Sy No. 378. I do not know that, as per Ex.P1 my grand father's 1st daughter Kamma and her sister minor Madamma have purchased item No. 2 from Yakoob Sab.

20. From the above deposition of DW1 in the cross-examination he has contradicted his pleadings in the written

statement and he went to the extent of pleading ignorance about his own genealogical tree and he has specifically deposed that, he does not know the name of the propositus as Agarada Madappa. But Ex.P1 and Ex.P10 speaks according to the case of the Plaintiffs. In the further cross-examination, the DW1 has admitted the relationship of the parties as claimed in the plaint. The relevant portion of cross-examination of DW1 at page 6 is as follows:

It is not true to suggestion that, Shivamma is the daughter of my grand father's daughter Madamma. It is true that, said shivamma is no more. It is true that, the husband's name of Shivamma is Mallappa. It is true that, said Mallappa is also not alive. It is true that, the children of Shivamma and Mallappa are Papanna, Chandramma, Sundaramma and Puttathayamma. It is true

that, they are Plaintiff No. 1, 3 and 4 in the present suit. It is true that, Chandramma is not alive. It is true that, 3rd Defendant Manju is the daughter of said Chandramma. It is not true to suggest that, after the demise of grand father Madappa, his daughters Kamma and Madamma are having equal right over the suit schedule properties. It is not true to suggest that, Kamma and Madamma have not partitioned the properties during their life time. It is not true to suggest that, myself, Shivamma and her husband Mallappa have not effected partition.

21. From these statements of the DW1, he has categorically admitted the nature of the property as ancestral and the relationship of the parties as claimed by the Plaintiffs. Though the DW1 has denied that, earlier there was

no partition in the family either in between daughters of the propositus or in between DW1, shivamma and Mallappa but he has not produced any oral or documentary evidence to show about the earlier partition if any. As such, the Plaintiffs have proved that, themselves and Defendants are members of joint family and by virtue of Ex.P1 and Ex.P10 the Plaintiffs have proved that, the suit schedule properties are the joint family properties. Therefore, **issue No. 1 and 2 are answered in the affirmative.**

22. ISSUE No. 3 : I have already narrated the contentions of the Defendants. The claim of the Defendants is that, suit schedule properties are acquired by Kamma by participating in a government bid and another property was the property of Chennurappa husband of Kamma. But in the

cross-examination of DW1 he has deposed at page 7 as follows:

I have not produced any documents to show that, 2 acres 22 guntas in Sy. No. 378/2A and 26 guntas in Sy. No. 378/1C was belonged to sister of my grand father. I say that, I have no objections to produce those documents. I have not produced any documents to show that, 30 guntas in Sy. No. 378/2B belongs to my father. Again I say that, I have no objections to produce the same. I have not produced any documents to show that, item No. 1 and 2 are acquired by my mother from my grand father's sister. It is not true that suggest that, since those properties are joint family properties and since I have no exclusive right over them and therefore, I have not produced (above stated) documents I do not

know how the khatha of item No. 1 and 2 are entered in my name. I voluntarily say that by giving money I have obtained the khatha in to my name.

23. Therefore, in the absence of any documents to prove the contentions of the Defendants, the Court can not imagine those contentions are proved. The DW1 has voluntarily admitted that, the khatha of item No.1 and 2 are changed by him by giving money to the authorities. Therefore, I hold that, the Defendants have failed to prove the **issue No. 3** and hence the same is answered in the **Negative**.

24. **ISSUE No. 4** : Since the Plaintiffs have proved the existence joint family, nature of properties and Defendants on the other hand failed to prove the properties as their private properties, the Plaintiffs are entitled for partition of

1/4th share as claimed by them. Therefore, the **issue No. 4** is answered in the affirmative.

25. **ISSUE No. 5** : In the pleadings, the Plaintiffs have claimed to be in joint, continuous and constructive possession over the suit schedule properties and once the joint and constructive possession are pleaded, the Plaintiffs are not permitted to seek the relief of mesne profits. Therefore, **issue No. 5 is answered in the Negative.**

26. **ISSUE No. 6** : For the aforesaid discussion on Issue No.1 to 5, I proceeds to pass the following:

ORDER

The suit of the Plaintiffs is decreed in part with costs.

The suit in respect of mesne profits is dismissed.

The Plaintiffs No. 1, 3, 4 and Defendant No. 3 together are entitled for 1/4th share in the suit schedule properties. The 2nd Plaintiff is entitled for 1/4th share in the suit schedule properties.

Draw preliminary decree accordingly.

(Dictated to the Typist and transcribed by her, revised and corrected and then pronounced by me in the open Court on this the 25th day of July 2015)

(MADHUSUDHANA D.K.)
Civil Judge & JMFC.,
Yelandur.

ANNEXURE

The witnesses examined on behalf of Plaintiffs:

PW1 : Papanna @ Papanni

The documents marked on behalf of Plaintiffs:

- Ex.P1 : Certified copy of the Sale Deed
Ex.P2 : Certified copy of the MR No. 134/1984-85
Ex.P3 to P6: 4 RTC Extracts
Ex.P7 : Akarbandha
Ex.P8 : Death certificate
Ex.P9 : Genealogical tree
Ex.P10 : Certified copy of the Sale deed

The witnesses examined on behalf of Defendants:

- DW1 : Mahadevappa

The documents marked on behalf of Defendants:

-Nil-

(MADHUSUDHANA D.K.)
Civil Judge & JMFC.,
Yelandur.

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