

**KADG310002892024**

Presented on : 20.10.2014

Registered on : 20.10.2014

Decided on : 17.08.2024

Duration: 9 years, 9 months, 28 days

**IN THE COURT OF THE SENIOR CIVIL JUDGE AND  
JMFC, HARIHAR****PRESENT: Smt. Padmashri A. Munnoli,**  
**B.A.L, LL.B.**  
SENIOR CIVIL JUDGE AND JMFC,  
HARIHAR**Dated this the 17<sup>th</sup> day of August, 2024****O.S. No. 86/2014**

Plaintiff / s : 1. H.B. Gangadhar, S/o Murigeppa,  
since dead represented by his legal  
heirs  
1a. Smt. Neelamma,  
W/o H.B. Gangadhar, Aged about  
42 years, Hanagavadi village,  
Harihar Taluk.  
1b. Keerthi H.G.,  
S/o H .B .Gangadhar, Aged about  
24 Years, Hanagavadi village,  
Harihar Taluk.  
1c. Kiran H.G., S/o H.B. Gangadhar,  
Aged about 22 Years, Hanagavadi  
village, Harihar Taluk.

(Plaintiffs by Sri. B.M. Siddalingaswamy Advocate)

**:: VERSUS ::**

- Defendant / s : 1. H. Kenchappa S/o Murigeppa,  
Aged about 55 years, R/o  
Hanagavadi village, Harihar Taluk,  
Davangere District.
2. Mahadevamma,  
W/o Basavanyappa Annaplavar  
Basavanyappa, S/o Mahadevappa  
Annaplavar, R/o Aladakatte  
village, Ranebennur taluk, Havari  
District.
3. Rudramma, W/o Halappa Kittad  
Halappa, S/o Nagappa Kittad,  
R/o Hullatti village, Hirekerur  
taluk, Haveri District.
4. Renukamma, W/o Basavarajappa  
Matturu, Basavarajappa  
S/o Fakeerappa Mattur,  
R/o Hullativillage, Hirekerur Taluk,  
Haveri District.
5. Yashodha,  
W/o Thippanna Chalageri,  
Thippanna S/o Revanappa  
Chalageri, R/o Hosa Kadlabalu  
village, Davangere Taluk and  
District.
7. Seetamma W/o Murigeppa  
Halasabalu, Aged about 78 Years,  
R/o Hanagavadi village, Harihar  
Taluk, Davangere District.

6. Anasooyamma W/o Kenchappa, Aged about 48 Years, Hanagavadi village, Harihar Taluk, Davangere District.
7. H.K. Umesh, S/o Kenchappa, Aged about 26 years, Hanagavadi village, Harihar Taluk, Davangere District.
8. H.K. Jagadeesh, S/o Kenchappa, Aged about 23 years, Hanagavadi village, Harihar Taluk, Davangere District.

(Defendant No.1, 3, 5 to 7 by Sri. B. Halappa, Advocate)  
(Defendant No.2, 4 by Anand N. Advocate)  
(Defendant No.8 and 9 by Balaji Singh, Advocate)

**Parties in IA No. 20 and 21**

Applicants / : Legal heirs of H.B. Gangadhar S/o  
Plaintiffs Murigeppa

**:: VERSUS ::**

Opponents/ : H. Kenchappa S/o Murigeppa and  
Defendants others

\*\*\*\*\*

**COMMON ORDER ON I.A.NO. 20 and 21 FILED BY  
PLAINTIFF U/Sec. 151 of CPC and U/O 16  
Rule 1(2) R/w Order 16 Rule 6 OF C.P.C.**

The IA No. 20 and 21 came to be filed by the plaintiffs, when the matter was posted for arguments on main suit. IA No.20 is filed by the plaintiff's with a prayer to reopen the side of

plaintiff's evidence and IA No.21 is filed to summon a witness by name B.M. Shivakumar S/o Malleshappa Banakar to come and give evidence about the nature of the property, site No.9, khata No.320 measuring 36 ft. x 9 ft. of Hanagavadi Gram Panchayath, Harihar.

**2.** Plaintiff No.1(c) in the affidavit sworn to in support of IA No.20 has stated that, there father instituted the present suit for the relief of partition and separate possession. Now after his death they have come on record as a legal heirs. That suit schedule C item No.3 and 4 properties were granted by the Government when Murigeppa was in joint with his brothers and the said properties were granted on behalf of the joint family. That the 5 brothers had got partition it equally. That Murigeppa gave his share of 36 ft. x 9 ft. of vacant site and gave his 2 shares and cash and acquired the entire property. That defendant No.1 has contended that item No.4 and 5 properties of schedule C were allotted to him individually. That no partition was effected in respect of these 2 properties nor Malleshappa was given two shares nor there was any exchange of the site measuring 36 ft. x 9 ft. That site No.9, khata No.320 measuring 36 ft. x 9 ft. is still standing in the name of Murigeppa and that same is a joint family property.

**3.** Therefore, in order to ascertain the nature of item No.3 and 4 properties of schedule C and if it is found that same

is also a joint family property, therefore, to ascertain these facts it is necessary to reopen the side of plaintiff evidence.

**4.** The plaintiff No.1(c) in the affidavit sworn to in support of IA No.21, has narrated similar facts as stated in the affidavit accompanying IA No.20. Further, it is stated that there father and themselves many a times attempted to get property extract of the said site from the Gram Panchayath but, the same could not be procured. That defendant No.1 in the reply notice has admitted that the said vacant site is given to Malleshappa. Therefore, to ascertain the nature of the said vacant site it is necessary to summon the witness stated in IA No.21. Hence, it was prayed that the application be allowed.

**5.** Common statement of objections are filed by defendant No.1, to IA No.20 and 21.

**6.** In the statement of objections it is contended that the applications are not maintainable. There is no property in the plaint C schedule measuring 36 ft. x 9 ft. allotted to the share of Murigeppa. There are no documents to show that property measuring 36 ft. x 9 ft. is in existence in the Gram Panchayath records, in the name of Murigeppa and his brothers. That the nature of said property cannot be gone into without impleading the brothers of Murigeppa and there sons. That item No.3 and 4 properties of plaint C schedule are self acquired properties of

defendant No.1. The application is filed only to protract the proceedings. Hence, it was prayed that the same be dismissed.

7. Heard, perused the material on record.

8. The points that arise for consideration of this court are as follows:

1. Whether the plaintiffs can be permitted to lead there further evidence as prayed in IA No.20?
2. Whether it is necessary to summon the witness stated in IA No.21 and as prayed in IA No.21?
3. Whether IA No.20 and 21 deserve to be allowed?
4. To what order?

9. The findings of this court on the above points are as follows:

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

**: R E A S O N S :**

10. **Point No.1 to 3**:- As these points are interlinked with each other, hence, they are taken together for common discussion in order to avoid repetition of facts.

**11.** Learned counsel for the plaintiffs would argue that defendant No.1 in the written statement filed has contended that the suit schedule C item No.3 and 4 properties were allotted to him and they are his self acquired properties, but, defendant No.1 has also contended about non inclusion of the vacant site measuring 36 ft. x 9 ft. That it is the case of the plaintiffs that this site was given to Malleshappa brother of Murigeppa, as item No.3 and 4 properties were retained by the family of Murigeppa and Murigeppa gave his share of 36 ft x 9 ft. to Malleshappa. Therefore, to ascertain the nature of this property, it is necessary to reopen the plaintiff side of evidence and to summon the witness who is competent to speak about nature of said property and hence, it was prayed that the application be allowed.

**12.** Learned counsel for the contesting witness would argue that there is no property in existence as asserted by the plaintiff. That no documents are produced by the plaintiffs to show the existence of the said property. That at this belated stage the application is not maintainable and hence, it was prayed that the same be dismissed.

**13.** Perusal of the material on record discloses that the present suit was originally instituted by H.B. Gangadhara for the relief of partition and separate possession. Suit properties are described in schedule A to C. Schedule A and B properties are landed properties. Schedule C properties are, 1) Property No.33

(20) measuring 33 ft. x 18 ft. 2) 322 (9/1) measuring 68 ft. x 32 ft. 3) 583 (81/1) measuring 22.5 x 30 ft. 4) 583/1 (81/1) measuring 22.5 x 30 ft.

**14.** Plaintiffs aver that one Murigeppa S/o Doddagangappa was the propositus of the family. This Murigeppa and his wife Seetamma are dead. Original plaintiff, defendants 1 to 5 are the children of this Murigeppa. Defendant No.6 to 8 are the wife and sons of defendant No.1. It is averred by the plaintiff that defendants No.2 to 5 are married daughters. That they are made as formal parties to the present suit, as they do not have any interest in the suit properties. That plaintiff left school at a early age and started to toil in the land. That defendant No.1 used to look after the work of selling the crops. That marriage of defendant No.2 was performed by Murigeppa, when he was in joint with his brothers. That during the year 1986-87 there was a partition between Murigeppa and his brothers. That schedule A land, schedule C item No.1 and 2 house properties were allotted to Murigeppa, further, item No.3 and 4 properties were a single piece in property No.81/1 and 1/5<sup>th</sup> share in this item No.3 and 4 properties and survey No.29/P measuring 1 acre 31 gunta and a vacant site measuring 36 ft. x 9 ft. were allotted to the said Murigeppa. Therefore, the same are ancestral properties. That five divisions were affected in item No.3 and 4 properties. That the same were allotted by the Government and were standing in the name of defendant

No.1 and as the brothers of Murigeppa raised objections, Murigeppa gave his share of 36 ft. x 9 ft. to, two of his brothers and retained the other two shares and took another two shares by given cash and accordingly, item No.3 and 4 properties came to the family of Murigeppa.

**15.** That later defendant No.1 neglected the plaintiff and accordingly, plaintiff left the house and started eking his livelihood by doing coolie work that plaintiff had demanded his share and defendant No.1 as well as his father had refused to give the share. That during the year of 2013 plaintiff had gone to PACS Society and came to know that defendant No.1 has got entered the name of his children in respect of schedule B properties illegally and therefore, the present suit.

**16.** Defendant No.1 denied the plaint averments. It is contended that about 16 years back a oral partition took place between plaintiff and defendant No.1. That in Sy. No. 18/1, plaintiff was allotted 20 guntas and defendant No.1 was allotted 1 acre 6 gunta. It is admitted that the khata of item No.1 and 2 properties of C schedule are standing in the name of Murigeppa. It is contended that item No.3 and 4 properties of C schedule are the self acquired properties of defendant No.1. It is admitted that a oral partition took place between Murigeppa and his brothers on 31.10.1986 and plaint schedule A, item No.1 and 2 properties of C schedule and site measuring 36 ft. x 9 ft. and

Sy. No. 29/P were allotted to Murigeppa. That item No.3 and 4 properties, were single block with site No.81 and allotted to defendant No.1 on 18.08.1986 by the Government of Karnataka through BDO, Harihar. That Murigeppa nor his brothers, nor the plaintiff has any interest in these two properties.

**17.** Further it is contended that defendant No.1 left the house during the year 1982, when Murigeppa was still in joint with his brothers. That out of his own earnings purchased schedule B land. As defendant No.1 was living alone site No.81 was allotted to him. That item No.3 and 4 properties of schedule C are his self acquired properties along with schedule B landed property.

**18.** Defendant No.1 who is examined as DW.1 at para No.20 of his examination-in-chief affidavit has stated that an extent of 36 ft. x 9 ft. of vacant site allotted to the share of his father is still in existence and that the same is not included in this suit.

**19.** Therefore, now the plaintiff has filed these two applications to reopen his side of evidence to ascertain about the existence of the vacant site measuring 36 ft. x 9 ft. In the plaint at para 5, it is stated that as item No.3 and 4 properties were standing in the name of defendant No.1, Murigeppa gave the vacant site measuring 36 ft. x 9 ft. to his two brothers and retained these two properties. The plaintiffs have produced

Ex.P.1 to 45, Ex.P.5 is the house list extract in respect of item No.1 to 4 properties of schedule C. Item No.1 and 2 properties show the name of Murigeppa and item No.3 and 4 properties show the name of defendant No.1 and his wife. Ex.D.2 is the partition deed of the year 1986 under which Murigeppa, his brothers by name Basappa, Malleshappa, Panchappa and Nagarajappa got divided the family properties. In this partition, Murigeppa is stated to have got site No.9 in block No.320, measuring 36 ft. x 9 ft. under the said partition, Basappa was also given 36 ft. x 9 ft., Malleshappa was given an extent of 30 ft. x 44 ft. and Panchappa was given an extent of 36 ft. x 9 ft. and so also Panchappa was given an extent of 36 ft. x 9 ft. in the partition deed, the boundaries are also mentioned to the respective shares.

**20.** The defendant No.1 has also not produced any property extract in respect of this 36 ft. x 9 ft. of vacant site in site No.9 of khata No.320. In the plaint, as discussed above the plaintiff has stated that his father Murigeppa gave this 36 ft. x 9 ft. of vacant site to two of his brothers as item No.3 and 4 properties were standing in the name of Kenchappa. But, however, the plaintiffs have not produced any property extract either in respect of the entire block of site No.9 in khata No.320, nor have produced any property extracts of the other brothers of Murigeppa to ascertain about the respective extends in this site standing in the names of brothers of Murigeppa as per the

partition of the year 1986. Though, DW.1 has contended that the suit is bad for non inclusion of this property but, there are no documentary evidence to show about the existence of this property.

**21.** It can be seen that IA No.9 was filed by the plaintiffs on 25.11.2019 along with list of witnesses and in that Panchappa the brother of Murigeppa was also cited as a witness. But, he was not examined by the plaintiffs. The defendants No.1 filed his examination-in-chief affidavit on 08.11.2021. Plaintiff counsel commenced the cross examination on 10.11.2021. The defendants evidence was closed on 06.07.2024. Therefore, on 08.11.2021 itself defendant No.1 had taken up a contention about non inclusion of this site. But, plaintiff for more than two years kept quite and did not take any steps to ascertain about the existence of this property. Further, though in the partition deed at Ex.D.2, this site No.9 is also stated to be divided but, as discussed above there are no documentary evidence produced to show the existence of this property. Therefore, any amount of oral evidence will not help the plaintiff, unless the existence of said property is established by producing documentary material. Therefore, the suit is of the year 2014 but, the plaintiffs have not made any efforts till the matter was posted for arguments, to ascertain about the existence of this site No.9 and khata No. 320. Therefore, even if the witness named in IA No.21 is summoned, his evidence may not help the plaintiffs in the

absence of any substnatial documentary material showing the existence of the said property. Therefore, the effect of non inclusion of the said property in the suit, can be considered while deciding the suit on merits. Therefore, when there are no materials to show the existence of said property, summoning the witness will not serve any purpose. Therefore, the plaintiffs have failed to make out sufficient grounds to reopen their side of evidence and summon the witness named in IA No.21. Accordingly, for these reasons I answer **point No.1 to 3 in the Negative.**

**22. Point No.4:-**For the reasons stated above, I proceed to pass the following.....

**:ORDER:**

IA No. 20 filed U/Sec. 151 of CPC and IA No.21 filed U/O 16 Rule 1(2) R/w Order 16 Rule 6 of C.P.C. by the plaintiffs are hereby dismissed.

(Dictated to the Stenographer directly on computer, typed by him corrected by me and then pronounced in the open court on this the 17<sup>th</sup> day of August, 2024)

(Smt. Padmashri A. Munnoli)  
Senior Civil Judge & JMFC,  
Harihar