

Form No.9 (Civil) Title sheet Judgment in Suits (K.P.91)	IN THE COURT OF THE PRINCIPAL CIVIL JUDGE AND JMFC.,HONNALI.
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PRESENT : Smt. Usha Rani R. B.A.L., LL.M.,
Principal Civil Judge & JMFC.,
Honnali .

ORIGINAL SUIT No.187/2012

Dated this the 2nd day of February 2015

PLAINTIFF: Smt. Basavbai W/o Ranganaik, Aged
about 60 years, Agriculturist, R/o Chi-
Kadadakatte village, Honnali taluk,
Davangere District.
(By Sri. B. Umesh, Advocate)

V/s

DEFENDANTS: 1. Sri. Basavanik S/o Sakranaik, Aged
about 50 years, Agriculturist, R/o
Odeyarattur village, Honnali taluk.

2. Smt. Kamali bai W/o Chandyanaiik,
Aged about 58 years, R/o
Vadeyarattur village, Honnali taluk.

3. Smt. Venkibai D/o Valyanaiik, Aged
about 56 years, R/o Vadeyarattur
village, Honnali taluk.

4. Smt. Lakshmi bai D/o Sakranaik,
Aged about 54 years, R/o
Kadadakatte village, Honnali taluk,
Davangere District.

5. Smt. Kali bai W/o Ramanaik, Aged
about 52 years, R/o Kuruva Tanda,
Honnali taluk.

6. Sri. Tejanaik S/o Sakranaik, Aged about 50 years, Vadeyarattur village, Honnali taluk.
7. Sri. Hanumanthanaik S/o Sakranaik, Aged about 48 years, R/o Vadeyarattur village, Honnali taluk, Davangere District.
8. Smt. Somli bai W/o Shankranaik, Aged about 58 years, R/o Salabalu village, Honnali taluk.
9. Smt. Heeribai W/o Govindanaik, Aged about 56 years, R/o Salabalu village, Honnali taluk, Davanagere District.

(By Sri. K.R. Manjunath for D-1, D-6 and D-7 and D-2, D-3, D-4,D-5 and D-8 for exaparte and D-9 for G.S. Ravikumar advocates)

Date of institution of the suit	:	29-06-2012	
Nature of the suit	:	For partition and separate possession	
Date of the commencement of recording of the evidence	:	30-01-2013	
Date on which the judgment was pronounced	:	02-02-2015	
Total duration:	Years	Months	Days
	02	05	04

(Smt.Usha Rani R.)
Principal Civil Judge & JMFC.,
Honnali.

J U D G M E N T

The instant suit is filed for partition and separate possession.

2. The facts of the plaint in nutshell are that:

The plaintiff avers that, Sri. Tejanaik is the common propositus of plaintiff and defendants. Sri. Tejanaik had two sons Sri. Hemlanaik and Sri. Sakranaik. Sri. Hemlanaik had three daughters i.e. Plaintiff and defendants No.8 and 9. Defendant no. 1 to 7 are sons and daughters of the Sakranaik. Sri. Tejanaik and two sons are dead and after his death the reveune records are not changed.

3. The plaintiff avers that, the suit schedule lands and properties are ancestral and joint family properties of plaintiff and defendants. There is no partition among them till date.

4. It is averred that the plaintiff on 20-06-2012 demand her share the defendants refused the same. The plaintiff has a share in the suit properties and hence this suit.

5. In pursuance of suit summons defendant No. 1, 6, 7 and 9 appeared through their respective counsels but failed to file any written statement inspite of sufficient opportunity. Hence written statement on behalf of defendant No.1, 6, 7 and 9 has been taken as not filed. However defendant No.2 to 5 and 8 failed to appear in pursuance of suit summons and they are placed exparte.

6. Heard the arguments of learned counsel for the plaintiff and defendants and also perused the oral and documentary evidence produced in this suit.

7. The following points arise for consideration.

1. *Whether the plaintiff proves that she and defendants are the members of Hindu joint family and suit schedule properties are joint family properties liable for partition?*
2. *Whether the plaintiff proves that she is entitled for share in the suit schedule properties? If so what share?*
3. *What order or decree?*

8. Plaintiff in order to prove her case has examined herself as PW.1 and got marked documents as Ex.P.1 to P.19 and closed her side. As there was no written statement there is no rebuttal evidence on behalf of the defendants.

9. . My findings on the above said points are as follows:

Point No.1 : In the Affirmative

Point No.2 : In the Affirmative

Point No.3 : As per the final order for the following

REASONS

10. **Point No.1 and 2:-** These two points are taken together for the purpose of common discussion in order to avoid repetition of facts and evidence. The plaintiff who entered the witness box has examined herself as PW.1 and reiterated the plaint averments. She has deposed that Sri. Tejanaik was the propositus of their family and he had two children Sri. Hemlanaik and Sri. Shankranaik. Sri. Hemlanaik had three daughters including the plaintiff and defendant No.8 and 9. Defendant No. 1 to 7 are the children of Sri. Sakranaik. She has also deposed that the suit schedule properties are the joint family properties and there has been no partition till date. In support of her affidavit she has got marked the genealogy of their family as Ex.P.1. The said genealogy goes to show that the propositus was Sri. Tejanaik who is no more. He had two children Sri. Hemlanaik and Sri. Sakranaik. Sri. Hemlanaik is shown to have wife Smt. Kalibai and they had children Smt. Basavibai, Smt. Somlibai, Smt. Ereebai. Sri. Sakranaik had wife Smt. Sakibai and they had children Basavanaik, Smt. Kamalibai, Smt. Venkibai, Smt. Laxmibai, Smt. Kalibai, Sri. Tejanaik and Sri. Hanumanthanaik.

11. Ex.P.2 is the RTC extract of Sy.No. 47/2A which is of the item No.1 property measuring 2 acres 35 guntas, which shows the name of Sri. Tejanaik, it pertains to the year 2001-

02. Ex.P.3 is the RTC extract of Sy.No. 50/P10 during the year 2011-12 which shows the name of Sri. Tejanaik who is the propositus. Ex.P.4 is the RTC extract of Sy.No. 47/2B which is item No.2 property measuring 2 acres, 30 guntas, which shows the name of Sri. Sakranaik. Ex.P.5 is the RTC extract of Sy.No.105/P1, which is item No.3 property measuring 1 acre 39 guntas, which shows the name of Sri. Tejanaik that is defendant No.6, during the year 2011-12. Ex.P.6 is the RTC extract of Sy.No.50/P5 which is the suit item No. 4 property measuring 37 guntas, which shows the name of Sri. Sakranaik. Ex.P.7 is the RTC extract of Sy.No.50/P8 which is item No.5 property, which shows the name of Sri. Hanumanthanaik during the year 2011-12. Ex.P.8 is the RTC extract of Sy.No.105/P2 measuring 1 acre 39 guntas, which is item No.6 property, which shows the name of Sri. Hanumanthanaik during year 2011-12. Ex.P.9 is the RTC extract of Sy.No.117/P1 measuring 1 acre 18 guntas, which is item No.7, which shows the name of Sri. Basavanaik during the year 2011-12. Ex.P.10 is the RTC extract of Sy.No.112/B measuring 2 acres, which shows the name of Sri. Basavanaik during the year 2011-12. Ex.P.11 is the RTC extract of Sy.No.51/P8 measuring 26 guntas, which item No. 9 property, which shows the name of Sri. Basavanaik during the year 2011-12.

12. Plaintiff has also got marked the tax assessment list of item No.10 and 11 as Ex.P.12, which shows the name of Sri. Sakranaik is entered in respect of property in janjar No. 26, house including vacant space and the name of Sri. Hemlanaik is seen in respect of property in janjar No. 28 property 28 house of vacant site during the year 2012-13. Ex.P.13 is the DCB register extract of item No. 10 and 11 in property No. 24 and 26 shows the name of Sri. Sakranaik and Sri. Hemlanaik. Plaintiff has also got marked the death certificate of Ex.P.14 which shows that Sri.Hemlanaik died on 29-01-1989.

13. Ex.P.15 is the RTC extract of Sy.No. 47/2A which is item No.1 property, which shows the name of Sri.Hemlanaik is entered during the year 1974-75 to 1978-79 in column No.12. However in the column No.9 the name of Sri. Hemalanaik s/o Sri. Tejanaik is entered. Ex.P.16 is the RTC extract of Sy.No. 47/2A which shows the name of Sri. Hemlanaik during the year 1979-80 up to the year 1984-85. Ex.P.17 is the RTC extract pertaining to the year 1978-79 which shows the name of Sri. Hemlanaik in column No.12. Ex.P.18 is the RTC extract of Sy.No.50 which shows the name of Sri. Sakranaika in column No. 12 during the year 1980-81. Column no 9 shows that it is a grazing land. Ex.P.19 is the RTC extract which shows the name of Sri. Hemlanaik in the column No. 12 during the year 1980-81.

14. PW.1 Smt. Basavi bai has been cross examined by the learned advocate Sri. K.R. Manjunath who appeared on behalf of the defendants. A suggestion is made that there was already a partition between the plaintiff and defendants and therefore plaintiff is not entitled for any share in the suit schedule properties. The suggestion is denied by Pw 1. There is no rebuttal evidence.

15. Contesting defendants had not filed any written statement and there is no rebuttal evidence on their behalf. Mere suggestion that there was already a partition is not sufficient to rebut the positive evidence adduced by the plaintiff. As per the revenue records the suit properties appear to be joint family properties and there is no rebuttal evidence.

16. In this regard it is beneficial to refer a decision of Hon'ble Supreme Court in **AIR, 1999 Supreme Court 1441** in between **Vidhyadhar v/s Manikrao and another** wherein Hon'ble Supreme Court held in para No.16 of the order reads as under.

Where a party to the suit does not appear into the witness box and states his own case on oath and does not offer himself to be cross examined by the other side, a presumption would arise that the case set up by him is not correct

17. The ratio laid down by the Hon'ble Supreme Court in AIR, 1999 Supreme Court 1441 in between Vidhyadhar v/s Manikrao and another 's case is that where a party to the suit does not appear into the witness box and states his own case on oath and does not offer himself to be cross examined by the other side, a presumption would arise that the case set up by him is not correct. In the present case also the defendants have not entered into the witness box and in view of the law laid down by the Hon'ble Supreme Court in the case cited supra an adverse inference has to be drawn as against the present defendants.

18. Further, in the instant case, the documents produced by the plaintiff as P series ie Ex. P 1 to 19 goes to shows that the suit properties are joint family properties and that the plaintiff is also a co parcener. Therefore the plaintiff is entitled for 1/6th share in the suit properties as sought for. Thus point no 1 and 2 are answered in the affirmative.

19. **Point No. 3**:- In the result and for the foregoing reasons I proceed to pass the following;

ORDER

The suit of the plaintiff is hereby
decreed with costs.

Plaintiff is entitled for 1/6th share in the suit properties and for separate possession of the same.

Draw preliminary decree accordingly.

(Dictated to the Stenographer transcribed and computerized by her, revised, corrected, signed and pronounced by me in the Open court on this the 2nd day of February 2015.)

(Smt.Usha Rani R.)
Principal Civil Judge & JMFC.,
Honnali.

ANNEXURES

LIST OF WITNESSES EXAMINED FOR THE PLAINTIFFS

PW.1 : Smt. Basavi bai

LIST OF DOCUMENTS MARKED FOR THE PLAINTIFFS

Ex.P.1 : Genealogical tree
Ex.P.2 to 11 : Record of Rights
Ex.P.12 : Tax assessment list
Ex.P.13 : DCB register
Ex.P.14 : Death certificate
Ex.P.15 to 19 : Record of Rights

LIST OF WITNESSES EXAMINED AND DOCUMENTS MARKED ON BEHALF OF DEFENDANTS:

-NIL-

(Smt.Usha Rani R.)
Principial Civil Judge & JMFC.,
Honnali.

