

**IN THE COURT OF THE II ADDL.SENIOR CIVIL JUDGE & JMFC
AT DHARWAD.**

:PRESENT:

**Sri.Ravi @ Ravindra D. Ari, B.Com., LL.B. (Spl)
II Addl. Sr. Civil Judge & JMFC,
Dharwad.**

Dated this the 18th day of December, 2019

OS No: 98/2017 & 109/2017

Plaintiffs in O S No.98/2017:

1. Manjunath S/o Fakkirappa Salakenavar
Age: 23 years, Occ: Agriculture,
2. Smt.Yallavva W/o Fakkirappa Salakenavar
Age: 45 years, Occ: Agriculture,
Both are R/o.Kogilageri
Dharwad.

(By Sri.S.C.Koppad, Advocate)

V/s

Defendants O S No.98/2017:

1. Kedarappa S/o Shivarayappa
Salakenavar,
Age: 55 years,
Occ: Agriculture,
R/o. Kogilageri
Dharwad.
(DEAD)

- 1a. Suresh S/o Kedarappa Salakenavar
Age: 28 years,
Occ: Agriculture,
- 1b. Mallishappa S/o Kedarappa Salakenavar
Age: 26 years,
Occ: Agriculture,
- 1c. Shekhappa S/o Kedarappa Salakenavar
Age: 24 years,
Occ: Agriculture,
All are R/o. Kogilageri
Dharwad.
3. Hanamantappa S/o Shivarayappa Salakenavar
Age: 52 years,
Occ: Agriculture,
R/o. Kogilageri
Dharwad.
4. Smt. Yallavva W/o Basavaraj Salakenavar
Age: 45 years,
Occ: Agriculture,
R/o. Madikoppa, Post: Kallapur
Tq & Dist: Dharwad.
5. Kumari Hemalata D/o Basavaraj Salakenavar
Age: 16 years,
Since minor represented by her
natural mother defendant No.3
as minor guardian

(D-1 & 2 by Sri A. V. Suryavanshi,
Advocate)
(D-3 & 4 placed exparte)

Date of institution of suit : 07.01.2014

Nature of suit : Partition
Date of recording of plffs' evidence. : 13.10.2017
Date of judgment : 18-12.2019
Total duration : Year/s Month/s Day/s
05 11 10

Plaintiffs in O S No.109/2017:

1. Hanamantappa S/o
Shivarayappa Shelakenavar
Age: 48 years, Occ: Agriculture,
R/o.Kogilageri,
Tq & Dist: Dharwad.
2. Kedarappa S/o
Shivarayappa Shelakenavar
Since deceased by his LRs
- 2a. Suresh S/o Kedarappa
Shelekanavar
Age: 28 years, Occ: Agriculture,
R/o.Kogilgeri village,
Tq & Dist: Dharwad.
- 2b. Mallesh S/o Kedarappa
Shelekanavar
Age: 26 years, Occ: Agriculture,
R/o.Kogilgeri village,
Tq & Dist: Dharwad.
- 2c. Shekhappa S/o Kedarappa
Shelekanavar
Age: 24 years, Occ: Agriculture,
R/o.Kogilgeri village,

Tq & Dist: Dharwad.

3. Smt.Yellawwa W/o Basavaraj
Shelakenavar
Age: 38 years, Occ: Household work,
R/o.Madikoppa,
Tq & Dist: Dharwad.
4. Kumari Hemalata D/o Basavaraj
Shelakanavar
Age: 20 years, Occ: Household work,
R/o.Madikoppa,
Tq & Dist: Dharwad.

(By Sri.A. V. Suryavanshi, Advocate)

V/s

Defendant O S No.109/2017:

Manjunath S/o Madiwalappa
Pomoji
Calling himself as
Manjunath S/o Fakkirappa Shelakenavar
Age: 24 years, Occ: Agriculture,
R/o. Shibargatti,
Tq & Dist: Dharwad.

(By Sri.S.C.Koppad, Advocate)

Date of institution of suit : 20.04.2017

Nature of suit : Declaration and Injunction

Date of recording of : 13.10.2017
plffs' evidence.
Date of judgment : 18-12.2019
Total duration : Year/s Month/s Day/s
02 07 28

...

COMMON JUDGMENT

That the both the suits are clubbed together since parties to the suit as well as suit properties are one and the same and thereby both suits have been clubbed.

2. **The case of the plaintiffs in OS No.98/2017 is as under**

It is submitted that, the suit schedule properties are ancestral properties of the plaintiffs and defendants.

3. It is further submitted that, the genealogy of the family of the plaintiffs and defendants is shown in the schedule 'A' annexed to the plaint. It is stated that, one Shivarayappa Shelakenvar who was original owner of the suit schedule properties had 4 sons by name Fakkirappa, who is father of the plaintiff No.1 and husband of the plaintiff No.2, another son by

name Kedarappa and Hanumantappa and one Basavaraj. Out of them first son by name Fakkirappa and another son by name Basavaraj are died. It is further stated that, the son by name Basavaraj died leaving behind the defendants No.3 & 4 as his Lrs.

4. It is further submitted that, the suit schedule properties are not yet divided amongst the plaintiffs and defendants and difference of opinion taken place between the plaintiffs and defendants and thereby the plaintiffs have demanded their legitimate $\frac{1}{4}$ share over the suit schedule properties on 24-12-2013 and for that, the defendants No.1 & 2 refused to effect the partition and thereby occasion arose to the plaintiffs to file present suit.

5. It is further submitted that, the said house property is in existence wherein the defendants are residing towards one part and plaintiffs are residing in another part and all the suit schedule properties are in joint possession of the plaintiffs and defendants. In the light of the above said backdrop the

plaintiffs have prayed to decree the suit.

6. In pursuance of the suit summons the defendants No.1 & 2 have appeared before this court through their respective counsel and filed written statement. But defendant No.3 & 4 remain exparte.

7. **The brief averments of the written statement of Defendant No.1 is as under:**

At the outset this defendant denied the very genealogy submitted by the plaintiffs. Further submitted that, the above said Shivarayappa Shekalenavar had got 4 sons by name Fakkirappa, Kedarappa, Basavaraj and Hanumantappa and out of them Fakkirappa and Basavaraj are died.

8. It is further submitted that, the said Fakkirappa got married with plaintiff No.2 by name Yallavva since 20-25 years back and after the marriage the said Yallavva was residing with late Fakkirappa for 2-3 months and thereafter she has left the company of the Fakkirappa and went to the parental house at Shibaragatti village.

9. It is further submitted that, the Yallavva never led marital life with Fakkirappa at any point of time since the Fakkirappa had suffering from mental illness and thereby the said Yallavva left the company of the Fakkirappa and went to Shibaragatti.

10. It is further submitted that, thereafter Yallavva got married with one Madiwalappa Pomoji who is resident of Shibaragatti, wherein she has led marital life with said Madiwalappa Pomoji. Out of their wedlock plaintiff No.1 - Manjunath is born. Hence the said plaintiff No.1 by name Manjunath is son of the said Madiwalappa Pomoji.

11. It is further submitted that, the said Yallavva was residing at Shibaragatti along-with said Madiwalappa and thereby the said Manjunath is not at all concerned to the family of the defendants.

12. It is further submitted that, when Yallavva left the company of the late Fakkirappa and then she has no nexus or

having relation with the family of the defendants and thereby she is not having any share over the suit properties.

13. It is further submitted that, the suit schedule properties are self acquired properties of the propositus by name Shivarayappa and after his death the defendants and late Fakkirappa and Basavaraj acquired the said properties and their name was appeared in respect of the said properties. It is further submitted that, after the death of the Fakkirappa the suit schedule properties are in joint possession of the defendants and thereby the plaintiffs are not having any right over the suit schedule properties.

14. It is further submitted that, these defendants have already filed the suit before the II Addl. Senior Division Judge i.e., before this court under OS No.314/2013 claiming the relief of declaration to declare that, the said Manjuanth who is plaintiff No.1 is not at all related to the family of the defendants. Hence the present suit of the plaintiffs is not maintainable. Accordingly prayed to dismiss the suit of the plaintiffs.

15. **The case of the plaintiffs in OS No.109/2017 is as under**

This suit is filed by the defendants in OS No.98/2017 seeking the relief of declaration to declare that, the plaintiffs are alone owners of the suit schedule properties and to declare that, the defendant by name Manjunath Madiwalappa Pomoji has no legal right whatsoever over the suit schedule properties. It is further stated that, these plaintiffs have already filed similar suit in OS No.314/2013 on the file of this court and said suit was withdrawn since it was suffering from technical defects and thereby the said suit was withdrawn with permission to file fresh suit. Accordingly filed the present suit seeking the same relief.

16. Herein it is relevant to note that, whatever contention raised in the written statement of OS No.98/2017 has reiterated by the plaintiffs in this suit. Hence reiteration of the averments of the plaint in this suit is not required. Accordingly these plaintiffs prayed to held that, the plaintiffs are alone absolute owner of the suit schedule properties and declare that the defendant in this suit has no legal right whatsoever over the suit schedule properties and consequential

relief of permanent injunction.

17. After filing the suit, suit summons was issued to the defendant and defendant appeared through his counsel and filed written statement.

18. **The brief averments of the written statement of the defendant is as under:**

At the outset this defendant has filed written statement by reiterating the averments of the plaint in OS No.98/2017. Therefore, the averments of the written statement of this defendant is not necessary to reiterate herein in order to avoid the repetition of fact. In the light of the above said contention taken in the O S No.98/2017 this defendant prayed to dismiss the suit of the plaintiffs.

19. On the basis of the pleadings of the respective parties, the following issues have been framed by my predecessor in title in OS No.98/2017:

ISSUES IN OS NO.98/2017

1. Whether the plaintiffs prove that, they and the defendants are the joint family members and the suit schedule properties are their joint family properties and as such, they have 1/4th share in the suit schedule properties?
2. Whether the plaintiffs are entitled for the relief of partition and separate possession as prayed for?
3. What Order?

20. On the basis of the pleadings of the respective parties, the following issues have been framed by my predecessor in title in OS No.109/2017:

ISSUES IN OS NO.109/2017

1. Whether the plaintiffs prove that they are the absolute owners of the suit properties?
2. Whether the plaintiffs prove that they are in actual possession of the suit properties?
3. Whether the plaintiffs prove the alleged interference of the defendant?
4. Whether the plaintiffs are entitled for declaration of the title of the suit properties?
5. Whether the plaintiffs are entitled for the relief

of perpetual injunction as prayed?

6. What order or decree?

21. In order to prove the case of the plaintiffs in OS No.98/2017 the plaintiff No.1 was appeared before this court and examined as PW.2 & plaintiff No.2 was examined as P.W.3. Herein it is relevant to note that, the plaintiff No.1 in OS No.109/2017 was examined as P.W.1 in this suit and consequently in lieu of clubbing the suits the evidence of the P.W.1 is discarded and thereafter the plaintiffs in OS No.98/2017 were examined as P.W.2 & P.W.3 respectively. Apart from that, they have produced 9 documents under Ex.P.1 to P.9.

22. On the other hand in order to prove the case of the defendants in OS No.98/2017, the defendant No.2 was examined as D.W.1 and two witnesses were examined as D.W.2 & 3 respectively apart from placing two documents under Ex.D.1 & D.2.

23. Heard the respective counsel at length.

24. On appreciation of oral and documentary evidence the

following are my findings to the above said issues:

OS No.98/2017

Issue No.1: In the Affirmative.

Issue No.2: In the Affirmative.

Issue No.3: As per final order,
for the following:

OS No.109/2017

Issue No.1: In the Negative.

Issue No.2: In the Negative.

Issue No.3: In the Negative.

Issue No.4: In the Negative.

Issue No.5: In the Negative.

Issue No.6: As per final `order,
for the following:

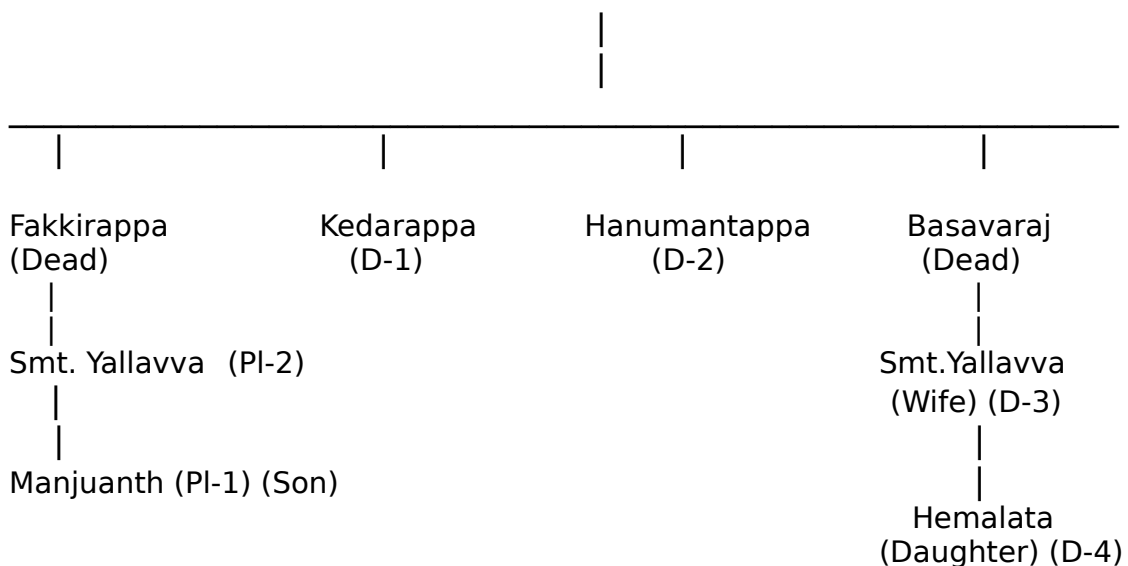
REASONS

25. **Issue No.1 in OS No.98/2017 & issue No.1 & 4
in OS No.109/2017:**

These all issues are taken together for discussion, in order to avoid the repetition of facts and they are inter-linked with each other in both the suits.

26. As stated herein supra, it is definite case of the plaintiffs in OS No.98/2017 is that, the suit schedule properties are their ancestral properties. It is further stated that, they are having $\frac{1}{4}$ share over the suit schedule properties. Before adverting to the area of controversy it is just and necessary to note the family genealogy submitted by the plaintiffs in schedule 'A' of the plaint.

Shivarayappa Salakenavar (Dead)



27. In the light of the above said genealogy it is submitted that, propositus by name Shivarayappa Shelakanavar had 4 sons by name Fakkirappa, Kedarappa, Hanumantappa and

Basavaraj. Out of them Fakkirappa and Basavaraj are no more. It is further submitted that, the plaintiff No.2 is wife of above said Fakkirappa and plaintiff No.1 is son of the above said Fakkirappa and similarly defendants No.3 & 4 are the wife and daughter of the another son by name Basavaraj. But the defendants No.1 & 2 are the sons of the late Shivarayappa Shelakanvar.

28. It is further submitted that, the suit schedule properties are their ancestral joint family properties and they have been in possession of the said properties. It is further submitted that, the plaintiffs in OS No.98/2017 are residing towards one part in the house property and in another part the defendants are residing. It is further submitted that, on 24-12-2013 the plaintiffs have demanded their share to the defendants. But the defendants have refused to effect the partition and thereby occasion arose to the plaintiffs to file present suit.

29. On the other hand it was contention of the

defendants in OS No.98/2017 who are plaintiffs in OS No.109/2017 is that, the marriage of the deceased Fakkirappa had taken place about 28-30 years back with Yallavva who is plaintiff No.2 in OS No.98/2017 and after the marriage within very short time the deceased Fakkirappa was suffering from mentally disorder and thereby the said Yallavva could not led marital life with the said Fakkirappa and thereafter she has left marital house and went to her parental house at Shibaragatti and thereafter she has never returned to the house of the said Fakkirappa.

30. It is further submitted that, Yallavva after went to the Shibaragatti village she has led her life with one by name Madiwalappa Pomoji as his wife and said Manjunath who is plaintiff No.1 O S No.98/2017 is born out of the relationship between Yallappa and Madiwalappa. Hence they are not having any right over the suit schedule properties. In the light of the above said backdrop the defendants prayed to dismiss the suit of the plaintiffs in OS No.98/2017 and prayed to decree the suit pertaining to OS No.109/2017.

31. Before adverting to the area of controversy between the parties to the suit it is just and necessary to note some admitted fact by both the parties to the suit. As stated herein supra, absolutely there is no dispute about the alleged fact that, the propositus by name Shivarayappa Shelakanavar had 4 sons and out of them Fakkirappa and Basavaraj are no more. It is further admitted that, the plaintiff No.2 in OS No.98/2017 is wife of the Fakkirappa. But only dispute is that, the said Yallavva not led marital life with Fakkirappa since he had suffering from mental ill-health and thereby she has left the company of the Fakkirappa and thereafter she had illicit relation with one Madiwalappa. Out of the said relation the plaintiff No.1 in OS No.98/2017 is born.

32. In order to prove the case of the plaintiffs in OS No.98/2017, the plaintiff No.1 has appeared before the court and examined as P.W.2 and he has filed his affidavit in lieu of examination in chief wherein he has reiterated the averments of the plaint, apart from placing 9 documents under Ex.P.1 to P.9.

At the outset the said plaintiffs got produced Aadhar card, Voters ID card, pan card and also RTC extract pertaining to the landed properties under Ex.P.1 to P.5. On careful perusal of said documents it is obvious to the court that, the name of the plaintiff No.1 is appeared as Manjunath S/o Fakkirappa Shelakanavar in the said Ex.P.1 to Ex.P.5.

33. Herein it is relevant to note that, as per Ex.P.2 - Voters ID card the name of the plaintiff No.1 in OS No.98/2017 is appeared on 06-01-2012. Apart from all these documents it is very relevant to note that, the name of the plaintiffs No.1 & 2 in OS No.98/2017 are appeared in the RTC extract pertaining to the landed properties and said entries were taken place during the year 2009.

34. In the light of the above said RTC entries and also looking to the voters ID card, Aadhar Card of the plaintiff No.1 in OS No.98/2017 it is obvious to the court that, the father name of the plaintiff No.1 by name Manjunath is appeared as Fakkirappa Salakenavar.

35. Apart from the above said documentary evidence the plaintiffs got produced voters list pertaining to the year 2014 wherein relevant part is marked as Ex.P.9(a). On careful perusal of Ex.P.9(a) further it reveals that, the name of the plaintiff No.1 is appeared as Manjuanth S/o Fakkirappa Salakenavar.

36. On the other hand as per the contention of the defendants another name of the Manjunath Madiwalappa Pomoji is appeared in Ex.P.9(b) and 9(c). On careful perusal of Ex.P.9(b) & 9(c) it is obvious to the court that, they are different persons than the plaintiff No.1. On careful perusal of photo copy of the plaintiff No.1 in OS No.98/2017 which is marked as Ex.P.9(a) and looking to the photo copy appeared in Aadhar card as well as voters ID card which were marked as Ex.P.1 & 2 it appears to the court that, all the photo copies which are appeared under Ex.P.1 & 2 and Ex.P.9(a) are one and the same. But photos appeared in Ex.P.9(b) & 9(c) are not pertaining to the plaintiff No.1 herein. No doubt the name of the persons who appeared under Ex.P.9(b) & 9(c) is shown as Manjunath S/o Madiwalappa Pomoji. But the said persons are entirely different from the plaintiff No.1 in OS

No.98/2017. Therefore, said Ex.P.9(b) & 9(c) are not helpful to the case of the defendants in OS No.98/2017. In the light of the above said documentary evidence it can be presumed that, the plaintiff No.1 in OS No.98/2017 by name Manjunath is none other than the son of the Fakkirappa Salakenavar.

37. In the case on hand, it is very relevant to note that, as per the contention of the defendants in OS No.98/2017 the said Yallavva is left the company of the Fakkirappa and went to her parental house wherein she had illicit relation with one Madiwalappa Pomoji and she got married with said Madiwalappa. But in order to substantiate the said contention absolutely there are no materials placed before this court, though they have filed suit in O S No.109/2017 seeking the relief of declaration to declare that, the defendant therein has no legal right whatsoever over the suit schedule properties. When the plaintiffs in OS No.109/2017 have sought relief of declaration and then they ought to have made the mother of the said Manjunath as party to the suit in OS No.109/2017. But unfortunately the plaintiffs in OS No.109/2017 failed to implead

the said Yallavva as party to the said suit for the reasons best known to them.

38. As stated herein supra, the burden heavily lies upon the plaintiffs in OS No.109/2017 to prove the alleged fact that, the said Manjunath is born to the Madiwalappa Pomoji due to illicit relation with late Yallavva. However also they have not produced any documents before this court to disprove the case of the plaintiffs in OS No.98/2017.

39. On the other hand, the plaintiffs in OS No.98/2017 got produced the documentary evidence as stated above. No doubt the plaintiff No.1 in OS No.98/2017 has not produced birth certificate and other relevant records to prove that his father name is Fakkirappa. But subsequent documents speaks the name of the father of the plaintiff No.1 in OS No.98/2017 as Fakkirappa Salakenavar.

40. If at all the said Yallavva left the company of the Fakkirappa Salakenavar and then Fakkirappa ought to have filed

the petition seeking the relief of dissolution of their marriage. But till the life time of the Fakkirappa he has not taken any steps to dissolve his marriage with Yallavva. If at all the said Fakkirappa was suffering from mental illness and then his brother ought to have filed suit against the Yallavva as a next friend of the Fakkirappa to seek the divorce and to dissolve the marriage. But no such type of efforts made by him or his brother and thereby it can be easily presumed that, the marriage between Yallavva and Fakkirappa is still in existence. When the marriage is in existence between the Yallavva and late Fakkirappa and that apart Yallavva led marital life for about 3 months with Fakkirappa as contended by the defendants in OS No.98/2017. Under such circumstance it can be easily presumed that, the said Manjunath was born out of the wedlock of Yallavva and Fakkirappa Salakenavar.

41. In the case on hand, in order to discard the documents relied in OS No.98/2017 absolutely no contra documents produced by the defendants therein.

42. Herein further it is relevant to note that, if at all the

plaintiff No.1 – Manjunath in OS No.98/2017 is not born to the Fakkirappa and then also his mother who is plaintiff No.2 by name Yallavva is having share over the suit schedule properties through her late husband Fakkirappa Salakenavar. On this count also the defendants in OS No.98/2017 cannot claim exclusive right over the suit schedule properties.

43. In order to prove the case of the plaintiffs in OS No.98/2017 the plaintiff No.1 and 2 were examined as P.W.2 & 3 and very plaintiff No.2 who is none other than wife of the Fakkirappa Salakenavar filed her affidavit, wherein she has reiterated the averments of the plaint in OS No.98/2017. Thereafter the learned counsel for the defendants in OS No.98/2017 cross examined at length, however also nothing has been elicited from the mouth of the said P.W.3 in order to discard the case of the plaintiffs in OS No.98/2017. Even nothing elicited from the mouth of the P.W.2 who is plaintiff No.1 in OS No.98/2017 in order to discard their case.

44. On the other hand, the defendant No.2 in OS No.98/2017 was appeared before this court and examined as

D.W.1. But during the course of cross-examination at para -3 he has deposed that runs thus:

ನನ್ನ ಸಹೋದರ ಫಕ್ಕೀರಪ್ಪ ತೀರಿಕೊಂಡ ನಂತರ ಈ ದಾವಾ
ಆಸ್ತಿಗಳ ಉತಾರಗಳಲ್ಲಿ ಅವಳ ಹೆಸರು ಕಡಿಮೆಯಾಗಿದೆ ಎಂದರೆ ಸಾಕ್ಷಿ
ನುಡಿಯುತ್ತಾರೆ ಅವನ ಹೆಸರು ಬರಲಿ ಇಲ್ಲ ಎಂದು. ನಿಪಿ-1 ರಲ್ಲಿ
ಅಸಲು ದಾವೆ 98/2017 ರ 1 ನೇ ವಾದಿಯ ಹೆಸರು ಇದೆ ಎಂದರೆ
ಸರಿ. ನಿಪಿ- 2 ರಲ್ಲೂ ಕೂಡಾ 1 ನೇ ವಾದಿಯ ಹೆಸರು ಇದೆ ಎಂದರೆ
ಸರಿ. ಸದರಿ ಉತಾರಗಳನ್ನು ತೆಗೆಸಿದ ನಂತರ ಅವನ ಹೆಸರು ಇರುವ
ಬಗ್ಗೆ ನನಗೆ ತಿಳಿದು ಬಂದಿರುತ್ತದೆ. ಸದರಿ 1 ನೇ ವಾದಿಯ ಹೆಸರು
ರದ್ದು ಮಾಡಲು ಉಪವಿಭಾಗ ಅಧಿಕಾರಿಗಳ ನ್ಯಾಯಾಲಯದಲ್ಲಿ
ಯಾವುದೇ ಅರ್ಜಿ ಸಲ್ಲಿಸಿಲ್ಲ.

45. In the light of the above said version of this D.W.1 it appears to the court that, he never challenged the RTC entries before any court of law and thereby it can be easily said that, the said entries are having some presumptive value unless and until rebut the said presumption. But herein the plaintiffs in O S

No.109/2017 have not produced any documentary evidence to rebut the presumption of the RTC entries.

46. Apart from the above said admission this D.W.1 further clearly deposed at para -5 of his cross-examination that runs thus:

ನನ್ನ ಅಣ್ಣ ಫಕ್ಕೀರಪ್ಪ ಮಾನಸಿಕವಾಗಿ ಅಸ್ತವ್ಯಸ್ಥನಾಗಿದ್ದ ಎಂದು
ತೋರಿಸಲು ಯಾವುದೇ ದಾಖಲಾತಿ ಹಾಜರುಪಡಿಸಿಲ್ಲ. ಸಾಕ್ಷಿ
ಮುಂದುವರೆದು ನುಡಿಯುತ್ತಾರೆ ಅವನನ್ನು ಆಸ್ಪತ್ರೆಗೆ ತೋರಿಸಿಲ್ಲ.

47. In the light of the above said version of D.W.1 it appears to the court that, there are no documentary evidence to demonstrate the alleged fact that, the said Fakkirappa had suffering from mental illness.

48. Apart from the evidence of this D.W.1, to support their contention another witness was examined as D.W.2 and he has also filed his affidavit by supporting the case of the defendants in OS No.98/2017. But during the course of cross-examination at para -2 he has deposed that runs thus:

ಅಸಲು ದಾವೆ 98/2017ರ 1 ನೇ ವಾದಿಯ ತಂದೆಯಾದ
 ಫಕ್ಕೀರಪ್ಪ ತೀರಿ ಹೋಗುವವರೆಗೂ ತಿರುಗಾಡಿಕೊಂಡು ಇದ್ದ ಎಂದರೆ
 ಸರಿ. ಸಾಕ್ಷಿ ಮುಂದುವರೆದು ನುಡಿಯುತ್ತಾರೆ ಸ್ವಲ್ಪ ಆರಾಮ ಇರಲಿಲ್ಲ
 ಎಂದು. ಸದರಿ 1 ನೇ ವಾದಿಯಾದ ಫಕ್ಕೀರಪ್ಪನ ಮದುವೆಯನ್ನು
 2 ನೇ ವಾದಿಯಾದ ಯಲ್ಲಪ್ಪನೊಂದಿಗೆ ಮಾಡಿರುತ್ತದೆ.

49. In the light of the above said version of this D.W.2 it appears to the court that, the said Fakkirappa had good health and he was rooming in the village even after the marriage. In the light of the above said version of this D.W.2 it appears to the court that, the said Fakkirappa was not suffering from any mental illness.

50. Apart from the evidence of D.W.2 another witness was examined as D.W.3 and he has also supported the case of the defendants in O S No.98/2017. But herein it is relevant to note that, the defendants No.2 & 3 have not deposed about the alleged illicit relation of the Yallavva with Madiwalappa Pomoji. If

at all the said Yallavva having relation and married with Madiwalappa Pomoji and then this DW.2 & D.W.3 ought to have deposed about the said fact before this court. But unfortunately they have not deposed anything about the alleged fact. But during the course of cross-examination of D.W.3 at para -2 he has deposed that runs thus:

ದಾವಾ ಎರಡು ಜಮೀನುಗಳಲ್ಲಿ 2010ರಲ್ಲಿ ಸದರಿ ಅಸಲು
ದಾವೆ 98/2017 ರ 1ನೇ ವಾದಿಯಾದ ಮಂಜುನಾಥನ
ಹೆಸರುಗಳು ಹತ್ತಿರುತ್ತವೆ ಎಂದರೆ ಇರಬಹುದು. ನಮಗೆ
ನ್ಯಾಯಾಲಯದಿಂದ ಕರೆಯಾಜ್ಜಿ ಬಂದಿರುವುದಿಲ್ಲ ಆದರೆ
ಸ್ವಇಚ್ಛೆಯಿಂದ ಬಂದಿರುತ್ತೇನೆ.

51. In the light of the above said version of this D.W.3 it is crystal clear to the court that, the said Fakkirappa was not suffering from any mental illness as stated by the defendants in OS No.98/2017.

52. On appreciation of materials available on record one thing is very certain to the court that, the plaintiffs in OS

No.98/2017 discharged their burden in proving their relationship with Fakkirappa Salakenavar. On the other hand the plaintiffs in OS No.109/2017 have failed to discharge their burden and even they have failed to disprove the documents relied by the plaintiffs in OS No.98/2017 which were marked as Ex.P.1 to P.5 & P.9. For the above said reasons and discussions it can be easily said that, the plaintiffs in OSNo.98/2017 are joint family members of the defendants and they are having 1/4th share over the suit schedule properties.

53. On the other hand, the defendants in OS No.98/2017 who are plaintiffs in OS No.109/2017 failed to prove that, they are absolute owner of the suit schedule properties and defendant in OS No.109/2017 is not son of the Fakkirappa Salakenavar. Hence I answer **issue No.1 in OS No.98/2017 in the Affirmative and issue No.1 & 4 in OS No.109/2017 in the Negative.**

54. **Issue No.2, 3 & 5 in OS No.109/2017 and issue No.2 in OS No.98/2017**

These all issues are taken together for discussion, in

order to avoid the repetition of facts and they are inter-linked with each other in both the suits.

55. As per the contention of the plaintiffs in OS No.98/2017 the suit schedule properties are ancestral properties of the plaintiffs and defendants. On the other hand, the defendants have also not disputed the alleged fact that, the suit schedule properties are belonging to the propositus by name Shivarayappa Salakenavar. After his death the suit schedule properties are standing in the name of the children of the said Shivarayappa Salakenavar and also in the name of the plaintiffs and Lrs of one Basavaraj who are defendants No.3 & 4. As per Ex.P.4 & 5 Record of Rights, it reveals that, they are pertaining to the item No.2 & 3 of the schedule properties. But the plaintiffs in OS No.98/2017 not produced the property extract pertaining to the house property bearing VPC No.37. But the defendants have not disputed about the existence of the said property and also defendants have not disputed about the nature of acquisition of the said properties. Under such circumstances it is just and necessary to held that, all the suit

schedule properties are ancestral properties of the plaintiffs and defendants.

56. As per contention of the plaintiffs in OS No.109/2017 they have been in actual possession of the suit schedule properties and defendants in OS No.109/2017 caused interference over the use and enjoyment of the said property. But while discussing the above said issues this court held that, the plaintiffs have proved the genealogy and they have also proved that, they are the joint family members of the defendants. Under such circumstances it cannot be said that, the plaintiffs in OS No.109/2017 are not having exclusive possession of the suit schedule properties. Therefore, question of causing the interference by the defendant in OS No.109/2017 does not survive for consideration.

57. Herein it is relevant to note that, the suit schedule properties are ancestral properties and late Shivarayappa had 4 sons and thereby the suit schedule properties shall be divided equally into 4 shares. Out of 4 shares 1 share is to be allotted in

favour of the plaintiff No.1 & 2 in OS No.98/2017 and 1 share each allotted to the defendants No.1 & 2 and another 1 share is allotted to the defendants No.3 & 4 together who are Lrs of the late Basavaraj. In the light of the above said reasons and discussions this court answer **issue No.2, 3 & 5 in OS No.109/2017 in the Negative and issue No.2 in OS No.98/2017 in the affirmative.**

58. **Issue No.3 in OS No.98/2017 & issue No.6 in OS No.109/2017:** In the light of the above said findings it is just and necessary to dismiss the suit of the plaintiffs in OS No.109/2017 and decree the suit in OS No.98/2017. Accordingly I proceed to pass the following:

ORDER

The suit of the plaintiffs in OS No.98/2017 is hereby decreed in the following manner:

1. The suit schedule properties shall equally divided into 4 shares.

2. The plaintiffs No.1 & 2 in OS No.98/2017 together entitled 1/4th share.

3. The defendants No.1 & 2 in OS No.98/2017 each entitled 1/4th share over the suit schedule properties.

4. The defendants No.3 & 4 in OS No.98/2017 together entitled 1/4th share over the suit schedule properties.

The suit of the plaintiffs in OS No.109/2017 is hereby dismissed.

Looking to the facts and circumstances of the case, parties are to bear their own costs.

Draw preliminary decree in OS No.98/2017.

Hereby office is directed to keep original copy of this judgment in OS No.98/2017 and copy of the same in OS No.109/2017.

(Dictated to the stenographer, transcript typed by her, corrected, initialed and then pronounced in the open Court on this the 18th day of December, 2019)

**(Ravi @ Ravindra D.Ari)
II Addl. Senior Civil Judge,
& JMFC Dharwad.**

ANNEXURE**Witnesses examined on behalf of the plaintiffs:**

- PW.1 : _Hanamantappa Shivarayappa Shelakenavar
(Plaintiff No.1 in OS No.109/2017 and
subsequently his evidence is discarded).
- PW.2 : _Manjunath Fakkirappa Shelakenavar.
- PW.3 : Smt.Yallavva W/o Fakkirappa Shelakenavar

Documents exhibited on behalf of the plaintiffs:

- Ex.P.1 : Original Aadhar Card of plaintiff No.1
in OS No.98/2017.
- Ex.P.2 : Original Voters ID Card of plaintiff No.1
in OS No.98/2017.
- Ex.P.3 : Original Pan Card of plaintiff No.1
in OS No.98/2017.
- Ex.P.4 & 5 : RTC extracts.
- Ex.P.6 & 7 : Certified copy of the plaint & Interim application
in OS No.314/2013.
- Ex.P.8 : Postal cover.
- Ex.P.9 : Voters list for the year 2014.
- Ex.P.9(a) to (c) : Relevant portion of voters list.

Witnesses examined on behalf of the defendants:

DW.1 : Hanumantappa Shivarayappa Shelakenavar.

DW.2 : Yallappa Hanumantappa Kalenavar.

DW.3 : Gurusiddappa Rudrappa Mattigatti.

Documents exhibited on behalf of the defendants:

Ex.D.1 & 2 : RTC extracts.

**II Addl. Senior Civil Judge,
& JMFC Dharwad.**