

**IN THE COURT OF I ADDL. SENIOR CIVIL JUDGE &
C.J.M., DHARWAD.**

Present : SRI. NITIN YESHWANTH RAO
B.com. L.L.B(Spl.),
I Addl. Senior Civil Judge,
& C.J.M., Dharwad.

O.S. No.283/2019

Dated 5th day of October 2021

PLAINTIFF/S : 1. Kumari Sheetal D/o Anil Randewadi,
Age: 12 years, Occ: Student,
Since minor represented by next friend
i.e., mother Petitioner No.1.
2. Smt. Vaishali W/o Anil Randewadi,
Age: 38 years, Occ: Household work,
Both are R/o: 1419, Nehru Nagar, Alnavar,
Tq: Dist: Dharwad.

(R/by Smt. R.M. Hiremath, Adv)

V/s

DEFENDANT/S : 1. Anil S/o Appanna Randewadi,
Age: 46 years, Occ: Business,
2. Smt. Tejaswini D/o Appanna Randewadi,
Age: 44 years, Occ: Household work,
3. Sunil S/o Appanna Randewadi,
Age: 39 years, Occ: Business,
R/o: 1419, Nehru Nagar, Alnavar,
Tq: Dist: Dharwad.

(D1 & D3 – By Sri. B.A.G Advocate.)

(D2 – By Sri. K.B. Patil Advocate.)

Date of Institution of suit: 11-12-2019

Nature of suit: Partition and separate
possession & declaration.

Date of Recording of evidence: 07-09-2021.

Date of Judgment: **05-10-2021**

Total duration:

Year/s Month/s Day/s

01

09

24

(Sri. Nitin Yeshwanth Rao)I Addl. Senior Civil Judge,
& C.J.M. Dharwad.**: J U D G M E N T :**

This is a suit filed by the plaintiffs seeking partition and separate possession of 1/6th share in the suit properties, for declaration that the relinquishment deed dated 30-07-2011 executed by defendants No.1 to 3 amongst themselves is illegal and not binding on them, for declaration that the plaintiff No.2 is having the right of maintenance and right of residence in the defendant No.1's share in the suit properties and for permanent injunction for restraining the defendants and all persons claiming through them from alienating, transferring and disposing of the suit properties till partition is effected.

2. Plaint averments in brief are as under:

The suit properties are as under:

Sl. No.	Property No.	Total extent of land area	Property particulars	Location
1.	1419	2598.4 Sq.Feet.	House	Neharu Nagar, Alnavar

2.	2266	391.5 Sq.Feet.	Shop	Zansi Laxmi road, Alnavar
3.	2270/B	330 Sq.Feet.	Shop & Gowdown	Zansi Laxmi road, Alnavar
4.	1181	3600 Sq.Feet.	Open space	Neharu Nagar, Alnavar
5.	342/55C	1200 Sq.Feet.	Open space	Kadabagatti.
6.	342/55	1200 Sq.Feet.	Open space	Kadabagatti.

The propositus of plaintiffs and defendants family Sri Appanna Mahadevappa Randewadi died in the year 2007 leaving behind him his wife late Smt. Pushpa and the defendants as his legal heirs. Plaintiff No.1 is minor daughter of defendant No.1 and plaintiff No.2. She is under the care and custody of the plaintiff No.2 who also represents her as next friend.

3. Plaintiff No.2's marriage with defendant No.1 was solemnized on 30-06-2006 in Nandagad village as per the customs and traditions prevailing in their community. After marriage, plaintiff No.2 joined defendant No.1 and began living with him and other defendants in her matrimonial home. Plaintiff No.1 was born on 04-09-2007. The propositus and the defendants constituted Hindu Joint Family and after the demise of the

propositus the joint family affairs were managed by the defendants mother during her life time. After her death in the year 2010, defendant No.1 is managing the joint family as the kartha. Till date, there is no partition in the joint family.

4. Soon after her marriage, plaintiff No.2 was ill-treated and deserted by the defendant No.1 at the instigation of defendants No.2, 3 and their mother. As the plaintiff No.2 was sent to her parental house, she filed a complaint under the D.V Act before the JMFC Court, Khanapur which was numbered as Crl. Mis. 130/2010. Thereafter, the defendant No.1 filed a petition seeking restitution of Conjugal rights in M.C No. 79/2010 on the file of this Court. The defendant No.1 however withdrew the petition when this plaintiff No.2 showed her willingness to join him and when he avoided, claimed maintenance. In the Crl. Mis. No. 130/2010, the plaintiff No.2 claim was allowed and she was granted residence and maintenance relief to the plaintiff No.2. By implementing the residence and protection order, she

returned to her matrimonial home along with the plaintiff No.1 and began residing there.

5. The defendant No.1 preferred Appeal against the order passed in Crl. Mis. No. 130/2010 at Crl. Appeal No. 128/2012 on the file of Hon'ble III Addl. District & Session Judge, Belagavi. The Appeal came to be allowed and the matter was remanded and permitting the defendant No.1 to lead evidence. Accordingly the matter was tried and after conclusion of trial orders were passed on 11-03-2015 again granting residence, protection and monetary relief to the plaintiff No.2. The defendant No.1 then questioned the same unsuccessfully in Crl. Appeal No. 41/2015 on the file of Hon'ble V Addl. District & Session Judge, Belagavi and Crl. Revision. Petition No. 100057 / 2016 before the Hon'ble High Court of Karnataka, Dharwad Bench. As such, plaintiffs continued residing in the joint family residential house and they have been exercising their right of maintenance through recovery petition.

6. The suit property at Sl. No. 1 bearing TPC No. 1419 is the joint family residential house. The Sl. No.2

property bearing TPC No. 2266 is the commercial premises wherein the joint family runs a stationary shop. The business in the stationary shop and the Sl. No. 1 and 2 properties stood in the name of the propositus during his life time. After his death, the name of defendants mother were substituted and the business licence was changed in the name of defendant No.3. After the demise of their mother, the names of the defendants was substituted in the property records of Sl. No.1 and 2 properties and the said entries continue till this day.

7. The stationary business run in the Sl. No.2 property is the family business established by the propositus and it gives sufficient income to meet out all the expenses and needs of the family. From this surplus income, the property described at Sl. No.3 bearing TPC No. 2270 / B was purchased in the name of defendant No.2 for godown purpose. Thereafter, it was developed and a two storied building was constructed utilizing the joint family income. Even though its stands in the name of defendant No.2, it is the joint family property of the plaintiffs and defendants.

8. Similarly, the suit properties described at Sl. No.4 to 6 are purchased from the joint family income. The Sl. No. 4 property bearing TPC No. 1181 was purchased in the name of defendants No.1 and 3. The Sl. No. 5 property bearing GPC No. 342/55C is purchased in the name of defendant No.2 and the Sl. No. 6 property bearing GPC No. 342/55 is purchased in the name of the defendant No.3. For all these purchases, consideration was paid out of the surplus income derived from the business run in the Sl. No. 2 property. Defendants do not have any other income other than the income derived from the stationary shop run in the Sl. No. 2 property.

9. Plaintiff No.1 is the co-parcener of the joint family since her birth. Plaintiff No.2 is the member of the joint family having right of residence in the joint family house and right of maintenance out of the income derived from the joint family business. Plaintiffs and defendants are in actual as well as constructive joint possession of all the suit properties which are yet to be partitioned.

10. To overcome the maintenance claim and plaintiffs rights in the suit Sl. No.1 and 2 properties, the

defendant No.1 in collusion with the defendants No.2 and 3 created a false registered relinquishment deed in the name of defendants No.2 and 3 on 30-07-2011. The said document is fabricated and created document without bringing the same to the knowledge of the plaintiffs. Defendant No.1 did not have any right to execute such a document. It is also not acted upon by any of the parties. As such, it is not binding on the plaintiffs share in the suit properties.

11. The plaintiffs came to know about the same only when they had applied for attachment warrants of movables in Sl. No. 2 property for recovery of maintenance arrears in Crl. Mis. 49/2019. When the Court commissioner went to execute the attachment warrant, the defendant No.2 resisted the same and paid a sum of Rs. 1,10,000/- and requested the Court commissioner not to attach and carry the movables available in the said property. Therefore, the Court commissioner returned with the warrant and the recovered amount on 30-09-2019. At the said time, defendant No.2 produced the copy of the above referred

registered relinquishment deed. As in the document itself it has been mentioned that nothing is paid as consideration for executing the relinquishment deed, the same is contrary to law and a fraudulent document.

12. In all the suit properties the defendants No.2 and 3 have 1/3rd share each whereas the defendant No.1 and plaintiff No.1 together have 1/3rd share. Thus, the share of the plaintiff No.1 in the suit properties is 1/6th share. Also the plaintiff No.2 has right of maintenance and right of residence in the 1/6th share of the defendant No.1. In order to deprive the plaintiffs of their rights in the suit properties the defendants are now trying to alienate and transfer the suit properties to the third parties. On 07-12-2019 the plaintiffs learnt that the defendants have been creating documents like agreement etc., with the third parties for transferring the suit properties. Therefore, the plaintiffs approached the defendants through elders on 08-12-2019 and requested them to effect partition and to allot them their lawful share in the suit properties. The defendants however not only refused to effect partition but also threatened to

dispose off the suit properties as per their wish and will.

Hence, this suit.

13. Pursuant to the service of suit summons, the defendants appeared through their Counsel but none of them filed any written statement.

14. On the basis of plaint averments and on hearing the Learned Counsel for the plaintiffs, the following points arise for my consideration:

POINTS

<u>1.</u>	<u>Whether the plaintiffs prove that the suit properties are the joint family properties of themselves and the defendants and that the plaintiff No.1 is entitled to 1/6th share in the same?</u>
<u>2.</u>	<u>Whether the plaintiffs prove that the relinquishment deed dated 30-07-2011 is illegal, void and not binding on them?</u>
<u>3.</u>	<u>Whether the plaintiff No.2 proves that she has the right of maintenance and right of residence in the defendant No.1's share of the suit properties?</u>
<u>4.</u>	<u>Whether the plaintiffs are entitled to the relief of permanent injunction?</u>
<u>5.</u>	<u>Whether the plaintiffs are entitled to the reliefs sought?</u>
<u>6.</u>	<u>What order or decree?</u>

15. My findings on the above Point are:

<u>Point No.1 :</u>	<u>Partly Affirmative,</u>
<u>Points No.2 to 5:</u>	<u>In the Affirmative,</u>
<u>Point No.6:</u>	<u>As per the final order for</u>

<i><u>the following:-</u></i>

:R E A S O N S:

16. **POINTS NO.1 TO 3:** As these points are interconnected and also to avoid repetition of facts they are discussed together.

17. Plaintiffs to prove their case examined plaintiff No.2 as PW.1 and got marked seventeen documents as Ex.P1 to P17. The plaintiff No.2 – Smt. Vaishali W/o Anil Randewadi who is examined as PW.1 reiterated the plaint averments in her affidavit filed in lieu of chief-examination. The four property register extracts pertaining to the Sl. No. 1 property bearing TPC No. 1419 are marked as Ex.P1 to P4 respectively. The four property register extracts pertaining to the Sl. No. 2 property bearing TPC No. 2266 are marked as Ex.P5 to P8 respectively. E-property register extracts pertaining to the Sl. No. 3 and 4 properties bearing TPC No. 2270/B and 1181 are marked as Ex.P9 to P11 respectively. Plaintiff No.1's school certificate issued by the Principal of Smt. A.C Hiremath English Medium school, Alnavar is

marked as Ex.P12. The letter dated 13-10-2014 issued by the Chief Officer of Alnavar Pattan panchayath is marked as Ex.P13. The certified copy of the registered relinquishment deed dated 30-07-2011 is marked as Ex.P14. The certified copies of the orders passed by the Hon'ble High Court of Karnataka, Dharwad Bench in Crl. Revision Petition No. 100057/2016 is marked as Ex.P15. The certified copies of the orders of the V Addl. District and Session Court, Belagavi passed in Crl. Appeal No. 41/2015 is marked as Ex.P16. The certified copy of the orders passed in Crl. Mis. No. 130/2010 is marked as Ex.P17.

18. Defendants on the other hand, neither cross-examined P.W.1 nor did they adduce any evidence on their behalf.

19. It is the specific case of the plaintiffs that the suit properties are the joint family properties of themselves and defendants No.1 to 3 and that no partition has ever been effected in respect of the same. The plaintiff No.1 is entitled to 1/6th share in the suit properties while the plaintiff No.2 had the right of

maintenance and right of residence in the 1/6th share of the defendant No.1.

20. In support of their case, the plaintiffs have relied upon aforementioned Ex.P1 to P17 documents. On careful perusal of the said documents it is noticed that the suit Sl. No. 1 and 2 properties earlier belonged to the propositus Appanna Mahadevappa Randewadi. After his death, the said properties were inherited by the plaintiffs and defendants and the name of defendants mother Smt. Pushpa W/o Appanna Randewadi was entered in the records pertaining to the said properties. Therefore, it is very much clear that the said properties are the joint family properties of the plaintiffs and defendants and as such, defendants mother could not have executed Ex.P14 relinquishment deed in respect of the said properties in favour of the defendants. In view of the same, the said relinquishment deed is not binding on the plaintiffs. As far as the Sl. No. 3 and 4 properties are concerned, it is the plaintiffs case that the Sl. No. 3 property bearing TPC No.2270/B was purchased in the name of defendant No.2 and the suit Sl. No.4 property bearing TPC No. 1181 was

purchased in the name of defendants No.1 and 3 out of the income derived from the joint family business run in the suit sl. No.2 property. As observed supra, the defendants neither cross-examined the P.W.1 nor did they adduce any contrary evidence. As the defendants did not contest the case, the evidence both oral and documentary placed on record by the plaintiffs remained unchallenged and uncontroverted. Therefore, this Court finds no reason to disbelieve the plaintiffs.

21. As far as the suit Sl. No. 5 and 6 properties are concerned, the plaintiffs have placed nothing on record. They have also not examined any witness in this regard. Therefore, it cannot be said that the suit Sl. No. 5 and 6 properties bearing No. 342/55C and 342/55 are the joint family properties of the plaintiffs and defendants.

22. The documents placed on record by the plaintiffs categorically revealed that the plaintiffs are the daughter and wife of defendant No.1. As the suit Sl. No.1 to 4 properties are the joint family properties of the plaintiffs and defendants No.1 to 3, the plaintiff No.1 being the daughter of defendant No.1 is entitled to half

share in the share of defendant No.1. In other words, the plaintiff No.1 and the defendant No.2 are entitled to 1/6th share each in the suit Sl. No. 1 to 4 properties. Similarly, plaintiff No.2 being the wife of defendant No.1 has the right of maintenance and right of residence in the 1/6th share of her husband i.e., defendant No.1. Considering the same and taking note of the all aforementioned circumstances, this Court has come to the conclusion that the plaintiffs have sufficiently proved that the suit Sl. No.1 to 4 properties are the joint family properties in which the plaintiff No.1 is entitled to 1/6th share while the plaintiff No.2 has the right of maintenance and right of residence in the 1/6th share of her husband i.e., defendant No.1 and also that the relinquishment deed dated 30-07-2011 is not binding on them. Accordingly, **Points No.1 is answered partly Affirmative while points No.2 and 3 are answered Affirmative**".

23. **Points No.4 and 5:-** As these points are inter connected and also to avoid repetition of facts they are discussed together.

24. The plaintiffs have alleged that the defendants are trying to alienate the suit properties to deprive the plaintiffs of their rights in the same. The defendants on the other hand as observed supra did not choose to contest the case. Therefore, in the absence of any contrary evidence and in view of the findings in the above discussed points No.1 to 3, this Court has come to the conclusion that the plaintiffs are entitled to the relief of permanent injunction, partition and separate possession and declaration as sought in the plaint. Accordingly, Points No.4 and 5 are answered “**in the Affirmative**”

25. **Point No.6:-** For the foregoing reasons, I proceed to pass the following:

O R D E R

Suit filed by plaintiffs is decreed in part with costs.

It is hereby declared that the plaintiff No.1 is entitled to 1/6th share in the suit Sl. No.1 to 4 properties.

Plaintiffs prayer in respect of the suit Sl. No. 5 and 6 properties is hereby dismissed.

It is further declared that the plaintiff No.2 has the right of maintenance and rights of

residence in the share (1/6th) of the defendant No.1.

It is also declared that the relinquishment deed dated 30-07-2011 is not binding on the plaintiffs.

Further, the defendants and all persons claiming through them are hereby restrained by way of permanent injunction from alienating or transferring the suit properties till the partition is effected and the plaintiffs are allotted their share in the same.

Draw preliminary decree accordingly.

(Dictated to the stenographer directly on the computer system, corrected, signed and then pronounced by me in the open Court on this the 5th day of October 2021.)

(Sri. Nitin Yeshwanth Rao)

I Addl. Senior Civil Judge,
& C.J.M. Dharwad.

A N N E X U R E

1. List of witnesses examined on behalf of plaintiff:-	
P.W.1:	Smt. Vaishali W/o Anil Randewadi
2. List of documents marked on behalf of plaintiff:-	
Ex.P1 to P8 :	Property register extracts.
Ex.P9 to P11:	E- property register extract.
Ex.P12 :	School leaving certificate.
Ex.P13 :	Letter.
Ex.P14 :	Certified copy of relinquishment deed.
Ex.P15 :	Certified copy of order in Crl. Rev. Pet. No.100057/2016.
Ex.P16 :	Certified copy of Judgment in Crl. Appl. No.41/2015.
Ex.P15 :	Certified copy of order in Crl. Mis. No.130/2010.

3. List of witnesses examined on behalf of defendants:-

NIL

4. List of documents marked on behalf of defendants:-

NIL

(Sri. Nitin Yeshwant Rao)I Addl. Senior Civil Judge
& C.J.M. Dharwad.