

KADW310003182022



Presented on : 03-06-2022
Registered on : 03-06-2022
Decided on : 10-02-2023
Duration : 0 years, 8 months, 7 days

IN THE COURT OF SENIOR CIVIL JUDGE AND JMFC
KALAGHATAGI

PRESENT

SRI. G.R. SHETTAR., B.com. LLB (Spl)
SENIOR CIVIL JUDGE & JMFC, KALAGHATAGI

DATED THIS 10TH DAY OF FEBRUARY 2023

O.S. No.46/2022

PLAINTIFF:

1. Smt. Nagavva W/o Sangappa Mukkalkatti,
Age: 68 Years, Occ: Agriculture,
R/o Begur, Tq: Kalaghatagi, Dist: Dharwad.

(R/by Sri. V.B.S., Adv)

Vs

DEFENDANTS:

1. Smt. Paravva W/o Malleshappa Kundaragi,
Age: 65 years, Occ:Household work,
R/o Dhumawad, Tq: Kalaghatagi,
Dist: Dharwad.
2. Gurupadappa S/o Basappa Mukkalkatti,
Age: 62 years, Occ:Agriculture,
R/o Begur, Tq: Kalaghatagi,Dist: Dharwad.
3. Smt. Iravva W/o Sangappa Karabasappanavar,
Age: 60 years, Occ: Household work,
R/o Hindasageri, Tq: Kalaghatagi,
Dist: Dharwad.
4. Smt. Shantavva W/o Kallappa Baliger,
Age: 55 years, Occ:Household work,
R/o Tabakadhonnihalli, Tq: Kalaghatagi,
Dist: Dharwad.
5. Smt. Shankravva W/o Parutappa

- Moodballar, Age: 50 years,
Occ: Household work,
R/o Hirehonnihalli, Tq: Kalaghatagi,
Dist: Dharwad.
6. Paravva @ Kallavva W/o Ulavappa Kotagunasi,
Age: 35 years, Occ: Household work,
R/o Dhumwad, Tq: Kalaghatagi,
Dist: Dharwad.
7. Shekappa S/o Ningappa Mukkalkatti,
Age: 45 years, Occ: Agriculture,
R/o Begur, Tq: Kalaghatagi, Dist: Dharwad.
8. Fakkiravva W/o Parmeshwar Gokul,
Age: 50 years, Occ: Household work,
R/o Ugnikeri, Tq: Kalaghatagi, Dist: Dharwad.
9. Shankrappa S/o Rudrappa Mukkalkatti,
Age: 46 years, Occ: Agriculture,
R/o Begur, Tq: Kalaghatagi, Dist: Dharwad.
10. Nagappa S/o Rudrappa Mukkalkatti,
Age: 44 years, Occ: Agriculture,
R/o Begur, Tq: Kalaghatagi, Dist: Dharwad.

(D-1,2,8 to 10-Exparte)

(D-3 to 7- R/by Sri. S.R.Hiremath., Adv)

1. Date of suit	: 03.06.2022
2. Nature of suit	: Partition & Separate possession
3. Date of recording evidence	: 12.01.2023
4. Date of closure of evidence	: 06.02.2023
5. Date of disposal	: 10.02.2023
6. Total duration	: Years / Months/ Days 00 / 08 / 08

(G.R. SHETTAR)
SR.CIVIL JUDGE & JMFC,
KALAGHATAGI

J U D G M E N T

Plaintiff has filed the suit claiming their 1/9th share in the suit properties with separate possession by metes and bounds.

2. Case of the plaintiffs in brief is as under:

Plaintiff has contended that propositus Irappa died leaving behind his three sons by name Basappa, Ningappa and Rudrappa, Basappa and his wife died leaving behind the defendant No.1, 2 and husband of the plaintiff by name Sangappa, likewise defendants No.3 to 7 are the legal heirs of Ningappa and defendants No.8 to 10 are the legal heirs of Rudrappa, Sangappa died leaving behind his son and wife i.e., plaintiff, son of the plaintiff also predeceased. The plaintiff has further contended that she and defendants are the members of joint family, suit properties are the ancestral and joint family properties and in joint possession and enjoyment of the parties to the suit. This being the fact when the plaintiff asked the defendants to effect partition and to allot her legitimate in the properties but the defendants have refused to effect partition. Hence, the plaintiffs have constrained to file the suit.

3. After service of summons, the defendants No.1, 2 and 8 to 10 have not appeared as such they have been placed Ex-parte. Defendants No.3 to 7 have appeared through learned counsel but not filed any written statement.

4. The plaintiff has examined herself as PW-1 and produced 9 documents.

5. Heard the arguments.

6. The points arise for my consideration are as under:

POINTS

1. Whether the plaintiff proves that she and defendants constitute joint family?
 2. Whether the plaintiff proves that the suit properties are the joint family properties?
 3. Whether the plaintiff is entitled for the relief as sought for?
 4. What order or decree?
7. My findings on the above points are as under;

POINT No.1 to 3: In the Affirmative

POINT No.4 : As per the final order
for the following:

REASONS

8. **POINTS No.1 to 3** : Plaintiff has contended that she and defendants are eh joint family members, she is the only legal heir of deceased Sangappa, suit properties are the ancestral and joint family properties standing in the joint names and in joint possession of the parties to the suit, when the plaintiff asked for effecting partition the defendants refused to effect partition. Hence, the plaintiff is before the court. Per contra, the defendants No.3 to 7 though appeared but not filed any written statement and other defendants have remained Ex-parte.

9. Plaintiff has deposed as PW-1 by reiterating the plaint averments and produced the documents at Ex.P-1 to 9, which are the RTC and certificates issued by Gram Panchayat pertaining to suit lands standing in the joint names of parties to the suit.

10. I have gone through the entire material carefully. The plaintiff has pleaded in the plaint, PW.1 has deposed in her evidence and also produced the documents which speak that plaintiff and defendants have come from common ancestor but belong to separate branches, suit properties are the joint family properties, no partition is taken place. The defendants No.3 to 7 though appeared but not filed any written statement and other defendants have remained Ex-parte and not contested the matter, so, there is no any reason to disbelieve the pleadings, evidence and documents produced by the plaintiff. Therefore, I am of the considered opinion that plaintiff has proved that she and defendants are the joint family members and the suit properties are the joint family properties and all are having legitimate share in the suit properties.

11. The plaintiffs have shown the genealogical tree there are three branches and $1/3^{\text{rd}}$ share each. Plaintiff is the wife of Sangappa who is the son of Basappa. So, the plaintiff is entitled to the share of her husband who was having $1/3^{\text{rd}}$ out of $1/3^{\text{rd}}$ i.e.,

1/9th share in the suit properties. The defendants No.1 and 2 are entitled for 1/9th share each, defendants No. 3 to 7 together entitled for 1/3rd share and defendants No.8 to 10 together entitled for 1/3rd share in the suit properties. Hence, I answer the point No.1 to 3 in the Affirmative.

12. **POINT No.4:** As discussed above suit of the plaintiff is required to be decreed. Since it is suit for partition, it is just and proper to direct both parties to bear their own cost. Hence, I proceed to pass the following:

ORDER

Suit of the plaintiffs is hereby decreed.

The plaintiff is entitled for 1/9th share in the suit properties with separate possession by metes and bounds.

The defendants No.1 and 2 are entitled for 1/9th share each, the defendants No.3 to 7 together entitled for 1/3rd share and defendants No.8 to 10 together are entitled for 1/3rd share in the suit properties.

Both parties are directed to bear their own cost.

Draw preliminary decree accordingly.

(Dictated to the stenographer directly on computer, typed by him, then printed, corrected, pronounced by me in open court on this **10th day of February 2023**)

(G.R. SHETTAR)
SR.CIVIL JUDGE & JMFC,
KALAGHATAGI

ANNEXURE

WITNESSES EXAMINED FOR PLAINTIFF:

PW-1 : Smt. Nagavva W/o Sangappa Mukkalkatti

DOCUMENTS EXHIBITED FOR PLAINTIFF:

Ex.P-1 to 6 : R of Rs

Ex.P.7 & 8 : Certificates pertaining to house properties

Ex.P.9 : Survival certificate

WITNESSES EXAMINED FOR DEFENDANT:

--NIL--

DOCUMENTS EXHIBITED FOR DEFENDANT:

--NIL--

(G.R. SHETTAR)
SR.CIVIL JUDGE & JMFC,
KALAGHATAGI