

**IN THE COURT OF CIVIL JUDGE AND J.M.F.C.
NAVALAGUND**

O.S. NO. 128/2011

Dated : This the 30th June, 2014

Present : **Balachandra N. Bhat.**
B.Sc. L.L.B. P.G.D.H.R.L..
Civil Judge and J.M.F.C., Navalagund.

Plaintiff : Smt. Basavannevva @ Suvarnavva W/o.
Irappa Shivashimpi, Age: 43 yrs, Occ:
Household. R/o. Naregal village, Ton Taluka.

(By Sri. B.M. Shillin, Advocate)

-V/s-

Defendants : 1. Sri. Baravaraj S/o. Veerappa Nagatan
Age: 40, Occ: Agri, R/o. Shalavadi village

2. Smt. Gurushantavva W/o. Shivayogappa
Dambal Age: 38, Occ: Service, R/o. Hubli.

3. Sri. shekappa S/o. Veerappa Nagatan,
Age: 36 yrs, Occ: Agri, R/o. Shelavadi
Village.

4. Sri. Gangadhar S/o. Veerappa Nagathan
Age: 34 yrs, Occ: Agri. R/o. Shelawadi village.

5. Sri. Umesh S/o. Veerappa Nagathan
Age: 32 yrs, Occ: Ex-Military Serviceman.
R/o. Shelawadi village.

(D.1 and 5 By Sri. V.T. Kulkarni, D.3 and 4 Ex
parte,)

Date of filing of suit : 16.09.2011

Nature of suit : Suit for Partition & Possession

Date of
Commencement of
recording the : 27.08.2013
evidence

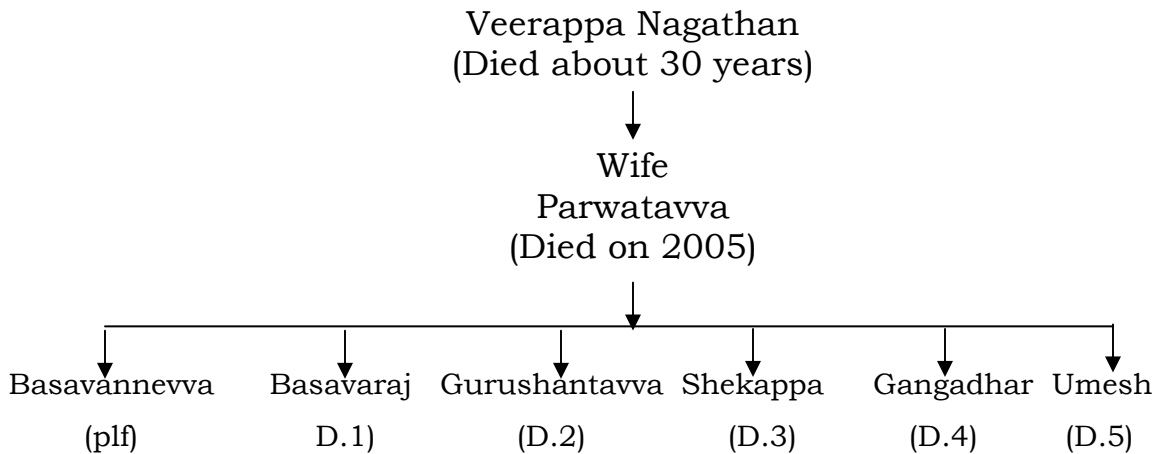
Date on which the
Judgment was : 30.06.2014
Pronounced

Total Duration : Yr/s Month/s Day/s
02 09 14

J U D G M E N T

The suit is filed by one of the daughter of Sri. Veerappa Nagathana against her brothers and a sister seeking partition and separate possession of her 1/6th share in the suit schedule properties by metes and bounds, costs and such other relief's.

The pedigree of the family of the plaintiff is as shown below:-



The properties described in the plaint are reproduced herein below and to be hereinafter referred to as the suit schedule properties:-

A. Landed property in SY No. 133/2B, measuring 12 acres 00 guntas of Nayaknur village, Navalgund Taluka.

B. House property in VPC No. 183 of Shelavadi village, Navalgund Taluka.

2. The case of the plaintiff in a nut shell is that:-

The defendants and she are the members of an undivided Hindu joint family and the suit schedule properties are the ancestral properties and the joint family properties. The plaintiff claims that there is no division in the family. The father of the plaintiff Sri. Veerappa Nagathana died and the mother Parvathewwa also had died during 2005. it is contended by the plaintiff that the name of the first defendant was entered in the revenue records in respect of the suit schedule properties during his minority. However, all the members are the coparceners and claim to be in joint possession of the suit schedule properties.

The plaintiff never intended to continue in the joint family and expressed her wish to sever from the family. The plaintiff claims to have demanded her legitimate share that was bluntly refused by the defendants. A legal notice was also got issued to the defendants on 2.12.2010. The defendants had failed to comply with the notice that compelled the plaintiff to institute the present suit.

3. The plaintiff has got herself examined by way of affidavit as PW.1 and has got marked 7 documents as Ex.P.1 to 7. No documentary evidence or oral evidence on the side of the defendants.

4. The following points arise for my consideration:-

POINTS

1. Whether the plaintiff proves that the defendants and she are the members of undivided Hindu family and that the suit schedule properties are the joint family properties?

2. Whether the plaintiff is entitled to the relief?

3. What decree or order?

5. My findings on the above points are as under:-

Point No.1: In the affirmative.

Point No.2: In the affirmative

Point No.3: As per final order,

6. Heard other side.

R E A S O N S

7. Points No.1 and 2:- A simple case of the plaintiff is that she is the daughter of one Sri. Veerappa Nagathana. Apart from the plaintiff the defendant No.2 is also the daughter and all others are sons . The revenue records are made in the name of the defendant No.1 during his minority. The defendant No.1 although have filed written statement at fag end of the case the application is also filed. In view of the case being posted for judgment and in the light of the dictum laid down by the Hon'ble High Court of Karnataka the application can not be considered. At this juncture the suit being one for partition, even if the written statement of the defendant No.1 is considered there is nothing that would

establish contrary to what plaintiff has pleaded. The only defence set up by the defendant NO.1 is that the properties in VPc No. 183 in the name of one Totappa Nagathana and after his death the other members who are the heir of the Totappa Nagathana by names Basavalingappa, Veerappa, Shivalingappa Nagathana their names being entered in the revenue records ought to have been made parties and therefore the suit is bad for non joinder of necessary parties. According to the defendant NO.1 he is the absolute owner of the suit schedule properties and the others members of the family do not have any right in the suit schedule properties. It is also contended by the defendant NO.1 that the suit schedule properties in RSY No. 133/2B was purchased by Sri. Veerappa Nagathana on 7.05.1964. The plaintiff in order to prove her case has got herself examined by way of affidavit and has also produced as many as 5 documents Ex.P.1 to 3 are the RTC Extracts pertains to SY No. 133/2B for the year 2002-03 to 2010-2011. In all these documents the name of one Basavaraj Nagathana is entered and the document at Ex.P.1 contains the name of Smt. Parvatevva as the minor guardian of the defendant No.1. Ex.P.4 is the office copy of legal notice. Ex.P.5 is the postal acknowledgment card. The witness PW.1 was not cross-examined by the defendant NO.1 even after giving sufficient opportunities considering the defence put forth by the defendant NO.1 is clear that the property was purchased by their father. It is also not disputed by the defendant NO.1 that the plaintiff is the daughter of Sri. Veerappa Nagathana and other parties to the present suit also

being LR's of Sri. Veerappa Nagathana. The only contention of the defendant NO.1 is that he is the absolute owner. Mere entries in the revenue records would not prove the title of the defendant NO.1. Moreover his defence is mutually contradictory. It is not the case for the defendant No.1 he had purchased the suit schedule properties out of his income. The father by name Sri. Veerappa Nagathana had purchased the suit schedule properties and now Sri. Veerappa Nagathana is not alive. It is also contended by the plaintiff that Smt. Parvatevva had died during 2005 which is also not disputed. Under such circumstances there is nothing to disbelieve the version of PW.1. In so far as the partial partition and suit being bad for non joinder of necessary parties is concerned. The defendant NO.1 has not placed anything on record to show that the collaterals of the present plaintiff and himself are also the members of the joint family and that there was no division amongst the brothers of Sri. Veerappa Nagathana. It is also not clear as to how the Totappa Nagathana is related to Sri. Veerappa Nagathana. Under such circumstances only on the basis of pleading it can not be held that the case of the plaintiff creates a doubt. It was for the first defendant who have pleaded specifically as to the relationship pedigree of the family and what are the properties that according to the defendant NO.1 were the joint family properties. In the absence of any such specific pleading on the preponderance of probabilities the plaintiff has clearly established that she has a right to share in the suit schedule properties and therefore I

am inclined to hold that the points No.1 and 2 in the affirmative.

8. Point No.3:- In view of the answer to points No.1 and 2 the plaintiff has entitled to the relief claimed by her, accordingly I proceed to pass the following order;-

O R D E R S

Suit of the plaintiff is hereby decreed with cost.

The plaintiff is entitled to 1/6th share in the suit schedule properties.

The plaintiff is further entitled to get her share to 1/6th share divided in the suit schedule properties by metes and bounds.

The plaintiff is also entitled to the costs.

Office is directed to draw preliminary decree accordingly.

(Dictated to the stenographer, transcribed and typed by him, the transcript revised, corrected and then pronounced by me in the open Court on this 30.06.2014)

(Balachandra N. Bhat)
Civil Judge & J.M.F.C. Navalagund

ANNEXURE

1) Witnesses examined for plaintiff :

PW.1 : Smt. Basavannevva @ Suvarnavva W/o. Irappa Shivashimpi

2) Exhibit on behalf of the Plaintiff :-

Ex.P.1 RTC extract in SY No. 133/2B

Ex.P.2 RTC extract in SY No. 133/2B

Ex.P.3 RTC extract in SY No. 133/2B

Ex.P.4 Legal Notice

Ex.P.5 Postal Acknowledgment

3) Witness examined on behalf of defendants:

--- Nil ---

4) Witness exhibited on behalf of defendants:

--- Nil ---

(Balachandra N. Bhat)
Civil Judge & J.M.F.C. Navalagund