

***IN THE COURT OF PRL. SENIOR CIVIL JUDGE & CJM.,
GADAG***

**Present: Sri. M.G. Shivalli,
B.Sc. LLB (Spl.)
Prl. Senior Civil Judge & CJM.,
Gadag.**

O.S. 149/2015

Dated this 16th day of June, 2016

PLAINTIFFs:

1. Smt.Suvarna w/o Hanamantagouda
Tadasageri, Age:33 Years.,
Occ:Agriculturist/Housewife,
r/o Bhairanahatti, Tq:Nargund,
Dist:Gadag.
2. Smt.Basavva w/o Channappa Inapur,
Age:55 Years.,
Occ:Agriculturist/ Household,
r/o Bhairanahatti, Tq:Nargund,
Dist:Gadag.

(By Sri. S.F.Doddamani Adv.,)

-Vs-

DEFENDANTs:

1. Channappa s/o Yallappa Inapur,
Age:60 years., Occ:Agriculturist
r/o Bhairanahatti, Tq:Nargund,
Dist:Gadag.

2. Shivappa s/o Yallappa Inapur,
Age:62 years., Occ:Agriculturist
r/o Bhairanahatti, Tq:Nargund,
Dist:Gadag.
3. Hanamappa s/o Yallappa Inapur,
Age:66 years., Occ:Agriculturist
r/o Bhairanahatti, Tq:Nargund,
Dist:Gadag.
4. Mahadevappa s/o Yallappa Inapur,
Age:64 years., Occ:Agriculturist
r/o Bhairanahatti, Tq:Nargund,
Dist:Gadag.

(By Sri. M.B.Kulkarni, Adv.,)

Date of institution of suit.	:	04/09/2015
Nature of the suit (Suit on promote, Suit for declaration and possession Suit for injunction etc.)	:	Partition and separate possession declaration/Injunction.
Date of commencement of recording of Evidence.	:	14/06/2016
Date on which the judgment was pronounced	:	16/06/2016
Total duration	:	Year/s Month/s Day/s 00 09 12

JUDGEMENT

1. Plaintiffs have filed the present suit against the
defendants for the relief of partition and separate
possession of their 1/3rd share each in the share of

first defendant and to declare that the relinquishment deed dated 11/06/2015 executed in the name of 2nd defendant before the Sub-Registrar, Nargund in respect of the suit property bearing R.S.No.81/C measuring 2 acres 00 guntas situated in Bhairanahatti village is not binding upon the plaintiffs and the M.R.No.72/2010-2011 in respect of the relinquishment of share by defendant No.1 in favor of defendant No.2 to 4 in respect of the suit property bearing R.S.No.43/3 measuring 4 acres 10 guntas is not binding upon the plaintiffs and for the relief of permanent injunction restraining the defendants from alienating the suit properties in any manner and for costs of the suit and to grant such other reliefs.

2. **In brief, the case of the plaintiff is as follows:**

One deceased Yallappas/o Hanumappa Inapur, who is the father of defendants herein had inherited the suit properties mentioned at Serial No.1 to 3 and

6 at page 2 in para 2 of the plaint from his ancestors in view of which, the same are the ancestral properties. Similarly, the serial No.4 of the suit property mentioned in para-2 of the plaint is the property inherited by the wife of above said deceased Yallappa i.e., Smt.Bheemavva from her parental house and the same is the ancestral property. So also, plaintiffs and defendant No.1 out of their earnings derived by their hard labour have purchased together the serial No.5 of the suit properties mentioned at page 2 in para -2 of the plaint in name of defendant No.23. Above said deceased Yallappa/Bheemavva had got 4 male children i.e., defendant No.1 to 4 herein and have got no female children.

3. Upon the death of father of defendants, as per the vardi/consent letter, the serial No.1 of the suit property has been standing jointly in the name of the plaintiffs/1st defendant as per M.R.No.14/2008-2009

wherein, they are in joint possession/cultivation of the same. Similarly, the serial No.2 of the suit property which has come to the defendant No.1 as per the order dated 20/03/2009 passed in L.R./Wahi-574/2008-2009 by the Assistant Commissioner, Gadag is in joint possession/cultivation of the plaintiffs/defendant No.1. So also, upon the death of the father of the defendants, the name of the defendants together as per succession has been mutated to the serial No.3 of the suit property as per M.R.No.35/2008-2009, wherein, the plaintiffs/defendant No.1 are having $\frac{1}{4}$ share therein and as such, the plaintiffs/defendant No.1 are in joint possession/cultivation of the same.

4. So also, upon the death of the mother of the defendants by name Smt.Bheemavva, the serial No.4 of the suit property, which was inherited by the above said Bheemavva from her parental house has been standing jointly in the names of

plaintiffs/defendant No.1 as per M.R.No.15/2008-2009 dated 05/09/2008, wherein, defendant No.1 is having $\frac{1}{4}$ share therein and the same is in their joint possession/cultivation. So also, plaintiffs are having $\frac{1}{3}^{\text{rd}}$ share each in the serial No.5 of the suit property which has been purchased jointly by the hard labour of the plaintiffs/defendant No.1 in the name of defendant No.1. That the plaintiffs are having $\frac{1}{3}^{\text{rd}}$ share in the serial No.6 of the suit house property standing in the name of 1st defendant herein. That all the above said suit properties are in joint possession/enjoyment of the plaintiffs/defendant No.1, wherein, no partition has been taken place in between the plaintiff/defendant No.1 in respect of the share of defendant No.1 in the suit properties.

5. That when the matter stood thus, the defendant No.1 and 2 in collusion with each other without to the knowledge of the plaintiffs with a malafide intention

have created the registered relinquishment deed dated 11/06/2005 from defendant No.1 of he having relinquished his right in favour of defendant No.2 without issuance of any notice by the revenue officials to the plaintiffs and without obtaining their consent wherein, the plaintiffs have not signed the same and as such, the above said relinquishment deed is not binding upon the plaintiffs herein. So also, the 1st defendant without to the knowledge of the plaintiffs, has relinquished his right in favour of defendant No.2 to 4 as per M.R.No.72/2010-2011 which is not binding upon the plaintiffs herein. Similarly, the defendant No.1 without to the knowledge of the plaintiffs has been alienating the suit properties by taking undue advantage of his name appearing in the records of the suit properties, which fact came to the knowledge of the plaintiffs in the month of June, 2015. That the plaintiffs approached the defendants for partition and separate

possession of their share in the suit properties in the presence of the elders, to which, the defendants upon refusing for the same have been constrained to file this suit as above said. With these averments and pleading the cause of action to the suit arose on 26/06/2015, when the defendants refused for partition and separate possession of their 1/3 share in the suit properties in pursuance of which, they have filed the present suit against the defendants for the above said reliefs.

6. In response to the suit summons, the defendant No.1 to 4 have appeared through their respective advocate and in spite of grant of sufficient time, defendant No.1 to 4 have not filed their written statement which is taken as not filed as could be seen from the order sheet dated 04/04/2016 and the case was posted for plaintiffs evidence.
7. Plaintiffs in support of their case have got examined the plaintiff No.1 as P.W.1 in this case and have got

marked the documents at Ex.P.1 to P.14 in this case and closed their side. As the defendant No.1 to 4 have not filed their written statement, the evidence of defendant No.1 to 4 is taken as nil as could be seen from the order sheet dated 14/06/2016.

8. Heard the arguments and perused the records of this case.
9. Now, the points that arise for my consideration are as under:

POINTS

- 1. Whether the plaintiffs prove that the suit properties are the joint ancestral family properties of the plaintiffs/defendants?**
- 2. Whether the plaintiffs prove that they and defendants are in joint possession/enjoyment of the suit properties?**
- 3. Whether the plaintiffs prove that the registered relinquishment deed dated 11/06/2014 executed by defendant No.1 in favour of defendant No.2 in respect of serial No.1 of the suit**

property is null and void and not binding upon the plaintiffs?

- 4. Whether the plaintiffs prove that the MR No.72/2010-2011 effected by defendant No.1 in the name of defendant No.2 to 4 in respect of Serial No.4 of the suit property is null and void and not binding upon the plaintiffs?**
- 5. Whether the plaintiffs prove the attempt of alienation by the defendants in respect of the suit properties?**
- 6. Whether the plaintiffs are having 1/3rd share each in the share of the defendant No.1 in the suit properties?**
- 7. What order or decree?**

10. My answers to the above said points are as under:

POINT No.1 In the affirmative

POINT No.2 In the affirmative

POINT No.3 In the affirmative

POINT No.4 In the affirmative

POINT No.5 In the affirmative

POINT No.6 In the affirmative

POINT No.7 : As per final order for the following**REASONS**

11. **POINT No.1 and 2:** Plaintiff No.1, who has got examined on her behalf and on behalf of plaintiff No.2 as P.W.1 in this case has re-iterated the averments of the plaint in her affidavit of her chief-examination to the effect that one deceased Yallappa s/o Hanamappa Inapur, who is the grand father of the plaintiff No.1 herein had inherited the serial No.1 to 3 and 6 suit properties in view of which,, they are ancestral properties. Similarly, one Bheemavva i.e., the wife of above said deceased Yallappa had inherited the serial No.4 of the suit property from her parental house and the same is their ancestral property. So also, the serial No.5 of the suit property is purchased out of the earnings of the hard labour of plaintiffs/defendant No.1 in the name of defendant No.1. Hence, the above said suit properties are in the

joint possession/enjoyment/cultivation of the plaintiffs/defendants.

12. In support of the above said contentions, P.W.1 has sought to place strong reliance upon the following documentary evidence which are as under;

- a) Ex.P.1 is the RTC extract of the Serial No.1 of the suit property bearing Sy.No.81/1C measuring 2 acres for the years 2015-2016 which reveals that the same is standing in the name of defendant No.1 and 2 herein.
- b) Ex.P.2 is the RTC extract of the Serial No.2 of the suit property bearing Sy.No.56/2B/2 measuring 2 acres 21 guntas for the year 2015-2016 standing in the name defendant No.1 herein.
- c) Ex.P.3 is the RTC extract of the Serial No.3 of the suit property bearing Sy.No.351/3 measuring 4 acres 26 guntas for the years 2015-2016 standing in the name of defendant No.1 to 4 herein.
- d) Ex.P.4/Ex.P.5 are the RTC extract of the Serial No.4 of the suit property bearing Sy.No.43/3 measuring 4 acres 10 guntas

for the years 2015-2016 standing in the name of defendant No.2 to 4 herein.

- e) Ex.P.6 is the RTC extract of the Serial No.5 of the suit property bearing Sy.No.1/36 measuring 0.01.08 guntas for the years 2015-2016 standing in the name of defendant No.1 herein.
- f) Ex.P.7 is the house panchayat extract for the year 1996-97 to 2015-2016 in respect of serial No.6 of the suit property standing in the name of defendant No.1 herein.
- g) Ex.P.8/Ex.P.9/Ex.P.10/Ex.P.12 are the M.R.Numbers 14/2008-2009, 2/2009-2010, 15/2008-2009, 72/2010-2011 in respect of the serial number 1, 2, 4 suit properties standing in the name of above said defendant No.1, 2, 4 and deceased Bheemavva.

13. As rightly argued by the learned advocate for the plaintiff, by placing strong reliance upon the oral evidence of P.W.1 coupled with the above said documentary evidence, it is seen that the defendants though they have appeared in this case have not chosen to challenge the above said case of the

plaintiffs by filing their written statement or even in the absence of the same, by cross-examining P.W.1 which conduct of the defendants goes to show that they admit the above case of the plaintiffs, which has remained unchallenged on record. Therefore, when the defendants herein who are the sons of above said Yallappa/Bheemavva as shown in the genealogy by the plaintiffs in para-3 of the plaint, wherein, they have not disputed regarding the above said suit properties at serial No.1 to 6 being the ancestral properties of the plaintiffs/defendants and they being in joint possession of the same, as above said in view of which, I have got no hesitation to hold that the above said suit properties are the joint ancestral properties of the plaintiffs/defendants and they are in joint possession/enjoyment/cultivation of the same as asserted by the plaintiffs as above said. Hence, in view of the above discussions made by me, I answer point No.1 and 2 in the affirmative.

14. **POINT No.3 and 4:** The evidence of P.W.1 reveals that the defendant No.1 in collusion with defendant No.2 to 4 in order to defeat the rights of the plaintiffs in suit properties has created the above said registered relinquishment deed dated 11/06/2015 in respect of Serial No.1 of the suit property bearing R.S.No.81/C measuring 2 acres at Ex.P.1 in favour of defendant No.2 and M.R.No.72/2010-2011 in respect of Serial No.4 of the suit property bearing R.S.No.43/3 measuring 4 acres 10 guntas at Ex.P.4/Ex.P.5 which is not binding upon the plaintiffs.

In support of said contentions, P.W.1 has produced the above said relinquishment deed dated 11/06/2015 marked at Ex.P.11 in this case and M.R.No.72/2010-2011 marked at Ex.P.12 in this case.

15. As rightly argued by the learned advocate for the plaintiffs, it is seen that when the above said suit

properties are the joint ancestral properties of the plaintiffs/defendants as held by me while answering point No.1 in the affirmative and as could be seen from above said M.R.No.14/2008-2009 standing in the name of deceased Yallappa marked at Ex.P.8 and from M.R.No.15/2008-2009 standing in the name of above said deceased Bheemavva marked at Ex.P.10, and when no partition has been effected in respect of the above said suit properties as alleged by the plaintiffs, then how could defendant No.1 could get absolute right over the above said suit properties to execute Ex.P.11 in favour of defendant No.2 and to effect M.R.No.72/2010-2011 at Ex.P.12 in favour of defendant No.3 and 4 which would be not valid in the eyes of law and is not binding upon the plaintiffs as rightly deposed by P.W.1 in her chief-examination. Further, the defendants have not all appeared in this case to challenge the above said case of plaintiffs and the above said oral/documentary evidence of P.W.1

as held by me while answering point No.1 and 2 in the affirmative and as such, the above said Ex.P.11/Ex.P.12 would be null and void and not binding on the plaintiffs as deposed by P.W.1 in her chief-examination. Hence, in view of the above discussions made by me, I answer point No.3 and 4 in the affirmative.

16. **POINT No.5:** The evidence of P.W.1 in para-14 of her chief-examination reveals that the defendant No.1 by taking undue advantage of his name appearing in the records of the suit properties without to the knowledge of the plaintiffs has been trying to alienate the suit properties in order to defraud them which fact came to their knowledge in the month of June, 2015 upon obtaining the records of the suit properties. The above said evidence of P.W.1 is not at all disputed by the defendants herein as I held by me while answering point No.1 and 2 in the affirmative. Further, it is also quite natural that when the names

of the defendants are appearing in the records of the suit properties, they would deal with the suit properties in the manner as they wish and as such, the plaintiffs would be entitled for the relief of permanent injunction as prayed in the plaint and as deposed by P.W.1 in her chief-examination as above said. Hence, in view of the above discussion made by me, I answer point No.5 in the affirmative.

17. **POINT No.6:** The defendants have not disputed the relationship in between the plaintiffs/defendants as per the genealogy shown in para 3 of the plaint by the plaintiffs. Ex.P.13/Ex.P.14 are the Aadhar Cards of the plaintiffs, which reveals that plaintiff No.2 is the wife of defendant No.1 and that plaintiff No.1 is the daughter of plaintiff No.2/defendant No.1. While answering point No.1 to 4 in the affirmative, I have already opined that the suit properties are the joint family ancestral properties of the plaintiffs/defendants wherein, they are in joint

possession/enjoyment of the same and that the above said Ex.P.11/Ex.P.12 are not binding upon the plaintiffs. Further, as per the evidence of P.W.1 in para-15 of her chief-examination reveals that no partition has taken place in between the plaintiffs/defendants in respect of the suit properties which above evidence of P.W.1 has remained unchallenged on record, in view of which, makes it clear that the plaintiffs are entitled for partition and separate possession of their 1/3 share each in the share of the defendant No.1 in the suit properties as prayed by them in the plaint. Hence, in view of the above discussions made by me I answer point No.6 in the affirmative.

18. **POINT No.7:** In the result, I proceed to pass the following

ORDER

Suit of the plaintiffs is decreed as follows:

- a) Plaintiffs are entitled for partition and separate possession of their 1/3rd share each in the share of defendant No.1 in the suit properties.**
- b) It is hereby declared that the registered relinquishment deed dated 11/06/2015 executed by defendant No.1 in favour of defendant No.2 in respect of the Serial No.1 of the suit property bearing R.S.No.87/1 C measuring 2 acres 00 guntas assessed at Rs.3.84ps situated in Bhairanahatti village is null and void and not binding upon the plaintiffs in any manner.**
- c) It is hereby declared that the M.R.No.272/2010-2011 in respect of the relinquishment of right by defendant No.1 in favour of defendant No.2 to 4 in respect of Serial No.4 of the suit property bearing R.S.No.43/3 measuring 1 acre 02 guntas out of 4 acres 10 guntas assessed at Rs.6.37ps**

situated in Bhairanahatti village is null and void and not binding upon the plaintiffs in any manner.

- d) Defendants or anybody acting on their behalf are hereby restrained from alienating the suit properties in any manner by way of permanent injunction.**

No order as to costs.

Draw Preliminary Decree accordingly.

(Dictated to the stenographer directly on computer, corrected by me and then pronounced in the open court on this the 16th day of June 2016)

**(Sri. M.G. Shivalli)
Prl. Senior Civil Judge & CJM.,
Gadag**

A P P E N D I X

1. List of witnesses examined on behalf of plaintiff:

P.W.1 – Suvarna H.Tadasageri

2. List of documents marked on behalf of plaintiff:

Ex.P.1 to Ex.P.6: RTC Extracts

Ex.P.7: House panchat Extract

Ex.P.8 to Ex.P.10 : Mutation Registers

Ex.P.11: c/c of relinquishment deed dated
11/06/2015

Ex.P.12 Mutation Register

Ex.P.13 and 14 Aadhar Cards

3. List of witnesses examined on behalf of defendants

NIL

4. List of documents marked on behalf of defendants

Nil

(Sri. M.G. Shivalli)
Prl. Senior Civil Judge & CJM.,
Gadag