



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

**Present: Smt. Preeti Sadguru Sadarjoshi
B.A., LL.B.
Prl. Senior Civil Judge & CJM., Gadag.**

DATED THIS THE 27th DAY OF JANUARY, 2024

ORIGINAL SUIT NO.199/2021

PLAINTIFFS:

1. Yallappa Karakappa Giddahanamannavar,
Age : 62 years, Occ : Agriculture
R/o. Vakkalageri, Gadag,
Tq : & Dist : Gadag.
2. Girijavva W/o Bheemappa Karmudi,
Age: 45 years, Occ:Agriculture
R/o. Vakkalageri, Gadag,
Tq : & Dist : Gadag.

(By Sri Y.D.Talawar, Advocate)

Versus

DEFENDANTS:

1. Karakappa S/o Dyavappa Giddahanamannavar,
Age:85 years, Occ:Agriculture,
R/o Vakkalageri, Gadag,
Tq:Dist:Gadag.
2. Shekhappa S/o Kariappa Giddahanamannavar,
Age:60 years, Occ:Agriculture,
R/o Vakkalageri, Gadag,
Tq:Dist:Gadag.

3. Irappa S/o Kariyappa Giddahanamannavar,
Age:58 years, Occ:Agriculture,
R/o Vakkalageri, Gadag,
Tq:Dist:Gadag.
4. Mallappa S/o Kariyappa Giddahanamannavar,
Age:54 years, Occ:Agriculture,
R/o Vakkalageri, Gadag,
Tq:Dist:Gadag.
5. Hanumappa S/o Kariyappa Giddahanamannavar,
Age:35 years, Occ:Agriculture,
R/o Vakkalageri, Gadag,
Tq:Dist:Gadag.
6. Renuka W/o Ravi Ibrahimpur,
Age:45 years, Occ:Agriculture,
R/o Vakkalageri, Gadag,
Tq:Dist:Gadag.
7. Yallamma W/o Irappa Huvannavar,
Age:43 years, Occ:Agriculture,
R/o Hatalageri,
Tq:Dist:Gadag.
8. Hanumavva W/o Lokesh Mugali,
Age:40 years, Occ:Agriculture,
R/o Hudco Colony, Gadag.
Tq:Dist:Gadag.
9. Shavitri W/o Nagappa Bhavikatti,
Age:38 years, Occ:Agriculture,
R/o Vakkalageri, Gadag.
Tq:Dist:Gadag.

(D-1 to 9 by Sri V.C.Shirol, Advocate)

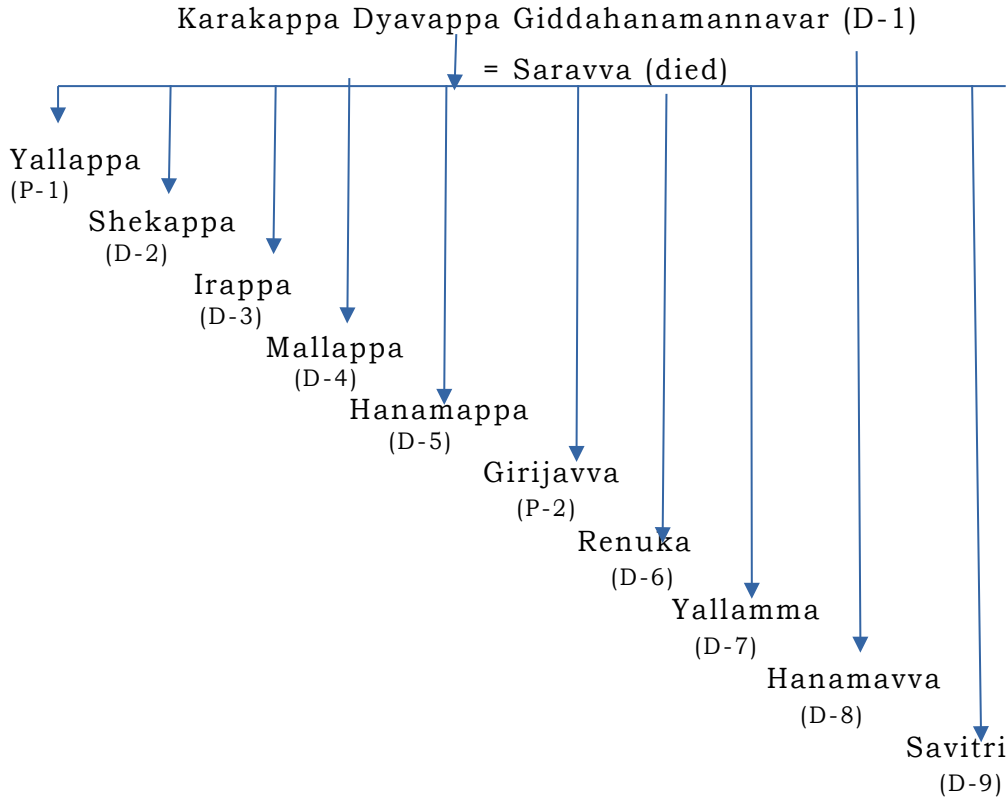
-:J U D G M E N T:-

2. Description of the suit properties is mentioned below:-

Sl. No.	R.S.No.	Area A – G	Situated at
1.	19/2	2.86	Asundi
2.	25/2	2-23	Asundi
3.	543/1	3-25	Gadag
4.	358/2	2-3	Gadag
5.	527/1B	2-12	Gadag

Sl.No.	CTS No.	Situated at
1.	3191/1B	Gadag
2.	56	Gadag

3. For the sake of convenience the genealogy of the family of the plaintiffs and defendants is shown below:-



4. The Brief facts of the plaintiff's case is as under:-

Sri Karakappa Dyavappa Giddahanamannavar is the propositus of the family of the plaintiffs and that of defendants. Sri Karakappa and Smt.Sharavva have 10 children namely 1) Yallappa (plaintiff No.1), Shekappa (defendant No.2), Irappa (defendant No.3), Mallappa (defendant No.4), Hanamappa (defendant No.5),

Girijavva (plaintiff No.2), Renuka (defendant No.6), Yallamma (defendant No.7), Hanamavva (defendant No.8) and Savitri (defendant No.9). Sharavva died long back. The plaintiff No.1 is the brother of the plaintiff No.2 and defendant No.2 to 9. The defendant No.1 is the father of the plaintiffs and defendant No.2 to 9. The plaintiff No.2 is the daughter of Karakappa. During partition between the family members of Karakappa i.e. Karakappa and his brothers, Karakappa was allotted suit schedule 'A' and 'B' properties. Till filing of suit, partition is not effected between the plaintiffs and the defendants. This being fact, the propositus without knowledge and consent of the plaintiffs has executed documents in favour of defendant No.2 to 9 and is trying to alienate the suit schedule properties. The propositus has moved an application before Tahasildar, Gadag to enter their names in suit schedule 'A' and 'B' properties on the basis of false documents. The Tahasildar, Gadag is trying to pass orders on the basis of false documents i.e. varadi to mutate the names of

the defendant No.1 to 9 with respect to suit schedule 'A' properties. But, the suit schedule 'B' properties are not mutated in the names of the plaintiffs by the Municipality, Gadag on the basis of varadi due to ill advise of the defendants. The plaintiffs requested defendants to allot their shares in suit schedule properties. The defendants are politically influenced persons and the plaintiffs being women folk, it is difficult to lead their lives and they have lifethreat also. The plaintiff No.2 is struggling to lead their life. Cause of action to file the suit arose in the first week of August, 2021 when the defendants refused to effect partition. This Court has jurisdiction. Court fee paid is proper. Hence, plaintiffs prayed to decree suit.

5. On proper service of summons, the defendant No.1 to 9 appeared through their respective counsels and filed written statement.

6. The defendant No.5 has filed written statement which is adopted by defendant No.1 to 4, 6 to 9.

7. The defendants have contended that the suit of the plaintiffs is not maintainable either in law or on facts of case. The correct name of the father of defendant No.2 to 5 is Karakappa and not Kariyappa. The description of the suit properties at para No.1 are incomplete and three more joint family properties are left. The suit is bad for non inclusion of all join family properties.

8. The defendants admitted the genealogy. The defendants denied that the plaintiffs are members of joint family. The defendants denied plaint para No.4 to 9 and 12.

9. The true facts as per contention of the defendants is as under:-

The plaintiff No.1 being elder son was managing the family along with defendant No.1. Due to non co-operation between womenfolk of the family, the plaintiff No.1 wanted to go out of joint family. So, the defendant No.1 demanded his share in the joint family properties in the year 2015. The defendant No.1 has purchased an

agricultural land bearing R.S.No.735/1+2/B measuring 4 acres 1 guntas out of which Southern portion land measuring 2 acre 1 gunta of Gadag village in Gadag Hobli of Gadag Taluk in the name of plaintiff No.1 out of joint family nucleus. The defendant No.1 has also purchased a plot in Hamalara Colony behind A.P.M.C., Gadag for the benefit of the plaintiff No.1 out of joint family funds. In addition, 30 sheeps of the joint family were also given to the plaintiff No.1 along with Rs.4,00,000/- for construction of his house by the defendant No.1. By receiving all these properties, the plaintiff No.1 promised the defendants that he will not demand any more share in the joint family properties and got separated from the joint family.

10. The plaintiff No.2 i.e. elder daughter among the daughters of the defendant No.1 also demanded her share in the joint family properties of the defendant No.1. In response, the defendant No.1 who was owning half share in a plot bearing plot No.57 in R.S.No.596 of Gadag vilalge along with Ningappa Gullanavar, got

purchased half share of Ningappa Gullanavar in the name of the plaintiff No.2 in the year 2010 out of joint family funds and gave up his $\frac{1}{2}$ share to the plaintiff No.2 in the year 2011. Rs.13,00,000/- was also given to the plaintiff No.2 by the defendant No.1 out of joint family funds for the construction of her house in the said plot in the year 2015. At the time of receiving this property, the plaintiff No.2 also promised that she is satisfied with the share given to her from the joint family and will not demand or claim any share further from the joint family. But, the plaintiffs against their respective promises are claiming share in the joint family properties by making false and imaginary pleadings. The plaintiffs received their share from the joint family and as such have detached themselves from the joint family. They will become ousters and they do not have any right or title over the joint family properties. As the plaintiffs got separated from the joint family, the remaining members of the joint family made a family arrangement among themselves under a

registered partition deed on 16/07/2021. Accordingly, the names of respective members of the family were mutated to their respective shares. The plaintiffs only with a nill motive to harass the defendants and to have illegal gain have filed this false suit. (1) The agricultural land bearing R.S. No.735/1+/2B measuring 4 acres 1 guntas out of it Southern portion of land measuring 2 acres 1 gunta of Gadag village in Gadag Taluk, (2) House and plot property standing in the name of the plaintiff No.1 in Hamalara Colony behind APMC Gadag and (3) Plot and house property in plot No.57 of R.S.No.596 of Gadag village in Gadag Taluk are the properties standing in the name of plaintiffs. Unless the above said properties are not included, suit of the plaintiffs cannot be proceeded. Hence, the defendants prayed to dismiss suit with costs.

11. On 12/07/2022, the learned predecessor of this Court has framed following issues:-

ISSUES

1. Whether the plaintiffs prove that, the suit schedule properties are the ancestral and joint family properties of the plaintiffs and defendants?
2. Whether the plaintiffs entitled for 1/11th share in the suit schedule properties?
3. Whether the defendant No.5 proves that, suit of the plaintiffs is bad for non-inclusion of all the joint family properties?
4. Whether the defendant No.5 proves that, after the plaintiffs got separated from the joint family, the remaining members have made a family arrangement under registered partition deed on 16/07/2021?
5. Whether the defendant No.5 proves that, as contended in para No.16 of the written statement?
6. Whether the plaintiffs are entitled for relief as sought in the suit?
7. What order or decree?

12. In order to prove the case of the plaintiffs, the plaintiff No.2 is examined as P.W.1 by filing affidavit in lieu of examination in chief and relied upon Ex.P.1 to Ex.P.8. Basappa Savadatti who know the

family of the plaintiffs and defendants is examined as P.W.2 by filing affidavit in lieu of examination-in-chief.

13. In spite of sufficient opportunity, the defendants did not lead evidence on their behalf. Hence, the defendants evidence is taken as nil as per order of this Court dated 16/01/2024.

14. Heard arguments of learned counsel for plaintiffs, learned counsel for the defendants and reply arguments of learned counsel for the plaintiffs.

15. This Court answer above issues as under:-

Issue No.1: In affirmative.

Issue No.2: In affirmative.

Issue No.3: In negative.

Issue No.4: In negative.

Issue No.5: In negative.

Issue No.6: The plaintiffs are entitled to 1/11th share each in suit schedule 'A' and 'B' properties.

Issue No.7: As per final order for following:-

REASONS

16. ISSUE No.1 to 5:- These issues are taken together for common discussion as they are interlinked

to each other and to avoid repetition of facts.

17. It is an admitted fact that Karakappa is the propositus of family. The defendant No.1 Sri Karakappa and Sharavva have ten children. It is an admitted fact that the suit schedule 'A' and 'B' properties are allotted to the defendant No.1 in family partition.

18. The point in dispute and crux of matter is whether the plaintiffs are entitled to 1/11th share in suit schedule properties. If plaint is carefully scrutinized, the plaintiffs have prayed for 1/11th share in suit schedule 'A' and 'B' properties.

19. In order to prove the case of the plaintiffs, the plaintiff No.2 has filed affidavit in lieu of examination-in-chief and relied upon Ex.P.1 to Ex.P.8.

20. The plaintiffs have relied upon Ex.P.1 to Ex.P.8.

1. Ex.P.1 is the ROR of R.S.No.19/2 measuring 2 acres 10 guntas of Asundi village, wherein the name of the defendant No.1 is appearing.
2. Ex.P.2 is the ROR of R.S.No.25/2 measuring 2 acres 23 guntas of Asundi village, wherein the

name of the defendant No.1 is appearing.

3. Ex.P.3 is the ROR of R.S.No.543/1 measuring 3 acres 25 guntas of Gadag village, wherein the name of the defendant No.1 is appearing.
4. Ex.P.4 is the ROR of R.S.No.358/2A of Gadag village, wherein the name of the defendant No.1 is appearing.
5. Ex.P.5 is the ROR of R.S.No.527/1B measuring 2 acres 12 guntas of Gadag village, wherein the name of the defendant No.1 is appearing.
6. Ex.P.6 is the property card pertaining to City Survey No.3191/1B wherein the name of the defendant No.1 is appearing.
7. Ex.P.7 is the property card pertaining to City Sy.No.3184/1 wherein the name of the defendant No.1 is appearing.
8. Ex.P.8 is the ROR of R.S.No.596 plot No.56 wherein the name of the defendant No.1 is appearing.

21. During course of cross-examination of P.W.1, nothing is culled out to prove the fact that the suit schedule properties are not ancestral joint family properties.

22. P.W.2 who know the family of the plaintiffs and defendants has filed affidavit in lieu of examination-in-chief. During course of cross-examination of P.W.2, P.W.2 has denied the suggestion that the plaintiff No.1 and 2 were allotted properties in lieu of their share.

23. In spite of sufficient opportunity, the defendants did not lead evidence on their behalf. Hence, the evidence of defendants is taken as nil as per order of this Court dated 16/01/2024.

24. This Court has gone through ruling of Hon'ble Apex Court reported in **AIR 1999 SC 1441** in the case of Vidhyadhar Versus Manikrao and another wherein their lordship have held that, "A party to suit not appearing into witness box and stating his own case on oath and not offering himself to be cross examined by other side raises presumption that case set by such party is not correct".

25. Burden of proof is on plaintiffs to prove their case. The plaintiffs have proved their case by

production of cogent oral and satisfactory documentary evidence.

26. It is a settled principle of law that pleadings are foundation of suit. In the present case, even though the plaintiffs have prayed for joint 1/11th share if the genealogy of the family of the plaintiffs and defendants is carefully scrutinized, the defendant No.1 to 9 and plaintiffs constitute Joint Hindu Family. The pleadings of defendants that the plaintiffs were allotted share and there is no status of joint family is not proved by production of cogent oral and satisfactory documentary evidence. In Hindu Law, parties are presumed to be in joint unless and until it is rebutted. In the present case, cause of action to file suit has arisen when the defendants refused to effect partition with respect to suit schedule 'A' and 'B' properties.

27. As per Judgment of Hon'ble Supreme Court of India in the case of Vineeta Sharma Vs Rakesh Sharma and other reported in **Civil Appeal Diary No.32601/2018** their lordships have held that daughter

being a coparcener is entitled to equal share in the joint family property as that of a son.

28. As per Sec.6 of Hindu Succession Act, the daughter being coparcener is entitled to equal share as that of sons. As such, the plaintiffs, defendant No.1 to 9 being the sons and daughters of propositus Karakappa are entitled to 1/11th share each in the suit schedule properties.

29. Even though the plaintiffs have prayed 1/11th joint share, it is not in dispute that the suit schedule properties are allotted to the share of defendant No.1 in partition. Furthermore, the defendant No.1 has not disputed that the suit schedule properties are not the joint family properties. Such being case, it has become an admitted fact that the suit schedule properties are ancestral joint family properties and that the plaintiffs are entitled to share in suit schedule properties. Even though, the plaintiffs have prayed for 1/11th joint share in suit schedule properties, it is a settled principle of law that mofussil

pleadings shall be construed liberally.

30. As per Sec.6 of The Hindu Succession Act and as per the Judgment of Hon'ble Apex Court in Vineeta Sharma, the daughters are having equal share in suit schedule properties as that of plaintiff No.1, defendant No.2 to 5. The plaintiffs and defendant No.1 to 9 are having 1/11th share each in suit schedule properties. Accordingly, the prayer of plaintiffs is moulded and the plaintiffs are entitled to 1/11th share each in suit schedule 'A' and 'B' properties. Hence, this Court inclines to answer issue No.1 and 2 in affirmative.

31. ISSUE NO. 3 to 5:- The defendants have failed to prove their case by production of cogent oral and satisfactory documentary evidence. Hence, issue No.3 to 5 are answered in negative.

32. ISSUE No.6: The plaintiffs are entitled to 1/11th share each in suit schedule 'A' and 'B' properties.

33. ISSUE No.7:- In view of foregoing discussion, this Court proceed to pass following:-

O R D E R

1. Suit of the plaintiffs is decreed.
2. The plaintiffs are entitled to 1/11th share each in suit schedule 'A' and 'B' properties.
3. The plaintiffs are directed to take steps U/O 20 Rule 18 of CPC soon after passing of preliminary decree as per Judgment of Hon'ble Supreme Court of India in Civil Appeal Nos.6406-6407/2010 in the case of Kattukandi Edathil Krishnan and Another -Vs- Kattukandi Edathil Valsan and Others and need not initiate separate proceedings.
4. Draw preliminary decree accordingly.
5. Looking to the facts and circumstances of case, no order as to costs.

(Dictated to the Stenographer, transcribed by him, corrected and then pronounced by me in open Court on this 27th day of January, 2024)

(Smt. P. S. SADARJOSHI)
Prl. Senior Civil Judge and CJM.,
GADAG.

A N N E X U R E**1. List of witnesses examined by Plaintiff:-**

P.W.1 : Girijavva Karamudi

P.W.2 : Basappa Savadatti

2. List of documents exhibited by Plaintiff:-

Ex.P.1 to 5 : RTC extracts

Ex.P.6 and 7 : Property Cards

Ex.P.8 : RTC extract

3. List of witnesses examined by Defendants:

-Nil-

4. List of documents exhibited by Defendants:

-Nil-

(Smt. P. S. SADARJOSHI)
Prl. Senior Civil Judge and CJM.,
GADAG.