



**IN THE COURT OF THE ADDITIONAL CIVIL
JUDGE & JMFC., RON**

Present: Sri. ADITYA R.KALAL B.A.L., LL.M. (Symbiosis)
Prl. Civil Judge & JMFC., Ron
C/c. Civil Judge & JMFC., Ron

Dated this the 11th day of January, 2024

O.S. No.84/2022

PLAINTIFFS:

- 1. SANGANABASAVVA,**
W/o Shivappa Hullikeri,
Age : 65 years, Occ : Agriculture,
R/o Nandikeshwar, Tq: Badami,
Dist: Bagalkote.
- 2. SUMANGALA,**
W/o Andappa Kadiyavar,
Age : 43 years, Occ : Agriculture,
R/o Halakeri, Now at Savadi,
Tq: Ron, Dist: Gadag.

(Represented by Sri. P.K.Udupi, Advocate)

-Versus-

DEFENDANTS:

- 1. PARVATEVVA,**
W/o Goolappa Elagar @ Hirehal,
**(Since deceased her Legal heirs are already on
record as plaintiffs, defendants No.2 and 3)**



- 2. ANNAPURNA,**
W/o Kuberappa Elegar @ Hirehal,
Age : 50 years, Occ : Agriculture,
R/o Near Mathad, 6th Ward , Savadi village,
Tq: Ron, Dist: Gadag.
- 3. AYYAPPA,**
W/o Kuberappa Eligar @ Hirehal,
Age : 22 years, Occ : Agriculture,
R/o Near Mathad, 6th Ward, Savadi village
Tq: Ron, Dist: Gadag.

**(D1- Dead,
D2, 3 Rept. by Sri. C.V.Hiremath Advocate)**

Date of Institution of suit	:	16.02.2022
Nature of Suit	:	Partition and separate possession
Date of commencement of recording of evidence	:	06.02.2023
Date of closing of evidence	:	13.09.2023
Date on which the judgment was pronounced	:	11.01.2024
Total duration	:	<u>Year/s</u> <u>Month/s</u> <u>Day/s</u> 01 10 23

J U D G M E N T

1. This suit is filed by the plaintiffs seeking the relief of partition and separate possession of their ½ share in the suit schedule properties by metes and bounds.

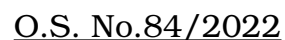


DESCRIPTION OF THE SUIT PROPERTIES:

2. The suit schedule properties are the agricultural lands bearing a) Sy. No.769/2 measuring 7a=20g, b) Sy. No.769/1 measuring 6a=22g situated at Ron taluk and anotehr land bearing c) Sy. No.377/1+2 measuring 3a=11g and d) house property bearing VPC No.137 situated at Savadi village, Ron taluk, Dist: Gadag and also 8 tolas of gold (*herein after referred to as the suit properties*)

BRIEF FACTS OF THE CASE:

3. It is the case of the plaintiffs that, one Gulappa is the propositus of the family of the plaintiffs and defendants and he died on 20.09.2008 leaving behind his wife Parvatevva (defendant No.1) and children by name Sanganasavva (plaintiff No.1) and Kuberappa, who died on 21.04.2007 leaving behind his wife Annapurna (defendant No.2) and a son by name Ayyappa (defendant No.3). The said Sanganasavva i.e., plaintiff No.1 has a daughter by name Sumangala who is plaintiff No.2 in this case. The genealogy of the family of the



4. Further it is stated that, the suit properties are the ancestral and joint family properties of plaintiffs and defendants and said properties are inherited by the propositus Gulappa from his ancestors. Further it is stated that, his son Kuberappa predeceased to him and after the death of Gulappa the suit properties are in joint possession and enjoyment of the plaintiffs and defendants and there has been no partition with respect to the suit properties between the plaintiffs and defendants till today. Further it is said that, propositus Gulappa and his father by name Sangappa Basappa Hirehal @ Yaligar both had purchased the land bearing Sy. No.769 in the year 1957 and said property was mutated in their joint names



as per ME No.6886 and they were in joint possession and enjoyment of the said property, and after the death of Sangappa the said property was in possession of Gulappa.

5. Further it is stated that, the said Gulappa and his son Kuberappa, have created a document as if they were not in good terms and that there was a partition between the Gulappa and his son Kuberappa in the year 1985 and on the basis of the said document, a mutation was effected as per ME No.12223. By way of the said mutation, ME No. 12223 the land bearing Sy. No.769 to the extent of 7a=15g is shown to be allotted to the share of Gulappa and in the same land , t eh remaining extent of 6a=27g is shown to be allotted to the share of Kuberappa. The plaintiffs state that there has been no registered partition deed, effected by the above said persons. Till today the suit properties are in joint possession and enjoyment of the plaintiffs and defendants and they are cultivating jointly.

6. Further it is stated that, the land bearing Sy. No.769 was in joint possession and enjoyment of Gulappa and his



family members since from 1957 and out of the said income derived from the said property, the propositus Gulappa had purchased another land bearing Sy. No.377/1+2B measuring 3a=11g in the name of his minor son Kuberappa (husband of defendant No. 2) in the year 1980. The said property has been purchased out of joint family income and except the joint family income, the said Gulappa had no other income to purchase the said property. Hence, it is said that the said property is also joint family property, as in the year 1980 the said Kuberappa was minor and he had no any independent income to purchase the said property.

7. Further it is stated that, the suit properties are the ancestral and joint family properties of the plaintiffs and the defendants and the said Gulappa had limited right over the said properties, and he had no absolute right to make any Gift, transfer or alienate or execute any Will deed with respect to the said properties. Further it is stated that, during the lifetime of Gulappa he had 1/3rd share and defendant No.1 had 1/3rd share and Kuberappa had 1/3rd share in the suit properties. It is said that, after the death of Gulappa, the defendants No.1



and 2 by colluding with each other entered their names with respect to the land bearing Sy. No.769/2 by giving false vardi. The said fact came to the knowledge of the plaintiffs when the defendants obstructed to the plaintiffs in the possession. Further it is stated that, the defendants are not the owners at any point of time and the said Gulappa had no right to execute Will deed. The said Will deed is said to be created by the defendants. The signature which is said to be appearing on the said document is not the signature of Gulappa and the said Gulappa in the year 2007 was suffering from ill-health and was not in a sound state of mind to dispose the said property. Hence, the said document is bogus and created by the defendants.

8. Further stated that, the plaintiff No.1 is the daughter of Gulappa and after the Amended Act came into force , she is is entitled for equal share in the suit properties of her father. Further there is no partition effected between the plaintiffs and defendants with respect to the suit properties till today. The plaintiffs have requested the defendants to effect the partition and separate possession but they have postponed to do so and



lastly refused to effect the same. Hence, the plaintiffs have filed this suit.

DEFENCE OF THE DEFENDANTS:

9. After service of suit summons, the defendants have appeared through their advocate and the defendant No.3 has filed his written statement and same has been adopted by the defendant No.2 by filing memo of adoption dated 22.08.2022. During the pendency of the suit, the defendant No.1 died on 22.04.2022 and her legal heirs were already on record as plaintiffs and defendants No.2 and 3 in this case.

10. The defendant No.3 in his written statement, has denied the entire plaint averments as false and has stated that, suit of the plaintiffs is not maintainable either in law or on facts of the case. Further he states that, the suit property land bearing Sy. No.769/2 measuring 7a=20g is the self acquired property of Gulappa S/o Sanganabasappa Yaligar @ Hirehal and his wife Parvatevva W/o Gulappa Yaligar who are paternal grand parent's of defendant No.3. The defendant No.3 looked after the said Gulappa and Parvatevva during their old age and



due to love and affection upon the defendant No.3, the said Gulappa had executed Will on 14.02.2008 in his favour and as per their say, the bond writer Shivanna B. Manneri had written the said will and got it computerized and it was read over to Gulappa and his wife Parvatevva and the witnesses by names G.S. Honnapur, Mahadevappa Sangappa Mokashi, Sangappa Huchappa Mangaluru, Sanganabasappa Katti and all of them signed to the said document in the presence of the witnesses and it was registered before the Sub-Registrar, Ron on 14.02.2008. At the time of execution of said documents, Gulappa and his wife Parvatevva were in sound state of mind and were having good health.

11. Further it is stated that, after the death of Gulappa and his wife Parvatevva, the said land bearing Sy. No.769/2 is in possession and enjoyment of the defendant No.3 as absolute owner. The said Gulappa had purchased the suit 1(b) and (c) properties out of his own income and he had a stationary shop and out of the income from the said stationary shop, he had purchased the above said properties. Hence the said properties are not the ancestral properties and they are the self acquired



properties of Gulappa. After the death of Gulappa and his wife Parvatevva , the defendant No.3 became the owner and he is in possession of the said properties and he is cultivating the said properties. Either the plaintiffs or the other defendants are not in possession and enjoyment of the said properties at any point of time. Further it is stated that, there is no cause of action to file the suit and the suit is not properly valued and the court fee paid is not correct and therefore he prays to dismiss the suit.

12. Based on the above pleadings of both the parties, this court has framed the following issues :

ISSUES

1. Whether the plaintiffs prove that they and the defendants No.1 to 3 constitute a Hindu Undivided Joint Family and that the suit schedule properties are their ancestral and joint family properties?
2. Whether the defendant No.3 proves that his paternal grand parents have bequeathed the suit properties to him by virtue of Will dated 14.02.2008?



3. Whether the plaintiffs are entitled for the relief of partition as prayed for? If yes, to what share?

4. What order or decree?

13. In order to prove the above issues, the plaintiff No.2 has got examined herself as P.W.1 and got marked Ex.P1 to 10 documents and closed her side. Whereas, the defendants, in spite of sufficient opportunities given to them, have not chosen to lead any evidence in support of their defence. Hence the case of the plaintiffs is uncontested.

14. After going through the pleadings, oral and documentary evidence which are placed before the court and after analyzing the evidence this Court answers above issues as hereunder:

Issue No.1 : In the affirmative

Issue No.2 : In the negative

Issue No.3 : In the affirmative

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



REASONS

15. Issues No.1 to 3:- These three issues are inter connected with each other, as such they are taken up for discussion together to avoid the repetition of facts.

16. In order to substantiate the case, the plaintiff No.2 Sumangala has got examined herself as P.W.1 and she has filed her affidavit in lieu of her examination-in-chief wherein, she has reiterated the plaint averments. In the chief-examination she has stated that, the suit properties are the ancestral and joint family properties of plaintiffs and defendants and there is no partition effected among the plaintiffs and defendants till today with respect to the suit properties. But the defendants No.2 and 3 by colluding with each other have got entered their names with respect to the land bearing Sy. No.769/2 by giving false vardi and after this fact came to the plaintiffs' knowledge, the plaintiffs demanded their share in the suit schedule properties, but the defendants have refused to effect the partition and separate possession with respect to the suit properties.



17. In a suit for partition, the burden is always on the plaintiffs to prove the existence of a Joint Hindu Undivided Family. Mere pleading about the existence of the joint family is not sufficient, but the same also has to be proved at the first instance. The law regarding the burden of proof of the existence of joint family property was laid down in ***Appalaswami v. Suryanarayanamurti AIR 1947 P.C. 189*** and was thus stated:

“The Hindu law upon this aspect of the case is well settled. Proof of the existence of a joint family does not lead to the presumption that property held by any member of the family is joint, and the burden rests upon anyone asserting that any item of property was joint to establish the fact. But where it is established that the family possessed some joint property which from its nature and relative value may have formed the nucleus from which the property in question may have been acquired, the burden shifts to the party alleging self-acquisition to establish affirmatively that the property was acquired without the aid of the joint family property.

18. Therefore applying the above dictum, let us look at the facts of the case. The plaintiff No. 2 has got examined herself as PW-1 and she has filed her affidavit in lieu of her



examination-in-chief wherein she has reiterated the contents of the plaint. She has got marked them as Ex.P1 to 10 in support of her contention.

19. The defendants have not disputed the relationship of the plaintiffs. The relationship of the plaintiffs is admitted. The contention of the defendants is that the suit properties are the self acquired property of Gulappa and he had purchased them during his life time from his own income and also from the income of the stationary shop, and that the land bearing Sy no. 769/2 measuring 7a=20g is the self acquired property of Gulappa and he has bequeathed the same to the defendant No. 3 through a registered will dated 14/02/2008, as the defendant No. 3 looked after his paternal grand parents, i.e., Gulappa and his wife Parvatevva during their old age. Therefore the contention of the defendants is that the suit properties are the self acquired properties of the Gulappa and he has executed a registered will and he was in a sound state of mind to execute the will and he had every right to bequeath a will and the same cannot be questioned by the plaintiffs. Therefore on these grounds, the defendant No. 3 prays to reject the case



of the plaintiffs. The plaintiffs also admit that the suit item No. 1 was purchased by the Gulappa and his father in the year 1957 and in the year 1985 , Gulappa and his son Kuberapp have created a deed as if there is a partition, and on the basis of the said deed, they have got created a mutation ME No. 12223 and 7a=15g is allotted to Gulappa and 6a=27g is allotted to Kuberappa. The defendant No. 2 is the wife of Kuberappa and defendant No. 3 is the son of Kuberappa. The defendants have not disputed the said mutation as contended by the plaintiffs. The only dispute is with regard to the execution of the will by Gulappa on 14/02/2008 with respect to Sy No. 769/2 measuring 7a=20g.

20. In order to prove the contentions taken in the plaint, the PW.1 has got marked Ex.P1 to 10 documents. Ex.P1 is the RTC extract with respect to the land bearing Sy. No.769/2 measuring 7a=20g situated at Ron taluk which is standing in the name of Ayyappa S/o Kuberappa M/g. natural mother Parvatemma W/o Gulappa for the year 2019-20 and in the column No.10 it has been mentioned as per MR No.310/2008-09 as per Will. Ex.P2 is the RTC extract with respect to the



land bearing Sy. No.769/1 measuring 6a=26g situated at Ron Village, Ron taluk which is standing in the joint names of Annapurna W/o Kuberappa, Ayyappa S/o Kuberappa M/g. natural mother Parvatemma W/o Gulappa (i.e., the defendants) for the year 2021-22 and in the column No.10 it is mentioned as per MR No.H202/2016-17 dated 15.06.2017 the khatha is made. Ex.P3 is the RTC extract with respect to the land bearing Sy. No.377/1+2 measuring 3a=11g situated at Savadi village, Ron taluk which is standing in the joint names of Annapurna W/o Kuberappa, and Ayyappa S/o Kuberappa M/g. natural mother Parvatemma W/o Gulappa for the year 2021-22 and in the column No.10 it is mentioned that as per MR No.37/2007-08 dated 23.10.2007, the same is mutated. Ex.P4 is the house property extract bearing VPC No.137 situated at Savadi village, Ron taluka for the year 2021-22 standing the name of Ayyappa S/o Kuberappa M/g. natural mother Parvatevva W/o Gulappa Yaligar. The said document shows that earlier the property was standing in the name of Gulappa. Ex.P5 is the copy of mutation extract bearing ME No.12223. Ex.P6 is the copy of mutation extract bearing ME



No.9804. Ex.P7 is the copy of mutation extract bearing MR No.310. Ex.P8 is the statement of SB account of Annapurna Eligar which is in the Karnataka Vikas Grameena Bank, Savadi branch, from 05.07.2013 to 28.03.2022. Ex.P9 is the statement of account of Annapurva Eligar having account in Karnataka Vikas Grameena Bank, Savadi branch, from 04.09.2015 to 28.03.2022. Ex.P10 is the statement of account of Annapurva Eligar having account in Karnataka Vikas Grameena Bank, Savadi branch, from 18.04.2011 to 28.03.2022.

21. I have carefully perused the said documents. The said documents show that the suit properties were earlier standing in the name of Gulappa. And after his death, the properties are inherited in the name of his only son ,Kuberappa. The plaintiff No. 1 is the daughter of Gulappa and Parvatevva and she is a daughter co-parcener. The plaintiffs have not produced any documents regarding the gold as claimed by them in the plaint. The will or the contention which is taken by the defendants has remained in their pleadings and the defendants have not lead any evidence , even though



sufficient opportunity is given to them. As per the judgment of the Hon'ble Supreme Court in the case of ***Vidhyadhar Vs. Manikrao and Another*** reported in **(1999) 3 SCC 573** if a party does not come and put forth his case in the witness box , then adverse inference has to be drawn against him that the case set up by him is false. In this case also , the defendants have not lead any evidence , even though they have taken the contention in their written statement. Even if the contentions taken by the defendants is believed to be true, it is seen that the Gulappa had purchased the suit property Sy No. 769 along with his father Sangappa and as such it is not the separate property of Gulappa and with respect to the land bearing Sy No. 377/1+2 also, the said property was purchased by Gulappa during the minority of his son Kuberappa in his name and as such Kuberappa did not have any independent income of his own. Therefore the suit item No. 1 to 3 properties are the joint family ancestral properties to the plaintiffs. Hence the contention of the defendant No. 3 does not hold any water. Therefore the same is rejected.



22. The plaitniffs No 1 is the daughter of Gulappa and Parvatevva and as such there is no dispute regarding the relationship of the parties. And the plaintiff No. 1 and her daughter Sumangala are together entitled for 1/2 share in the suit item No. 1 to 4 immovable properties. Likewise, the other 1/2 share is to be allotted to the defendants No. 2 and 3. therefore for these reasons, I answer the above issues No. 1 to 3 accordingly.

23. Issue No.4:- In view of the reasoning and conclusion arrived on above issues, this Court proceeds to pass the following;

ORDER

The suit of the plaintiffs is partly decreed with costs.

The contention of the plaintiff regarding partition of the suit item No. 5 gold property is hereby rejected.

The plaintiffs No. 1 and 2 are together entitled for ½ (one-half) share in the landed properties bearing Sy no. 769/2 measuring 7a=20g and Sy



Nbo. 769/1 measuring 6a=22g situated at Ron Village and also in the landed property bearing Sy No. 377/1+2 measuring 3a=11g situated at Savadi village and the house property bearing VPC No. 137 of Savadi village.

The defendants No. 1 and 2 are also together entitled for $\frac{1}{2}$ (one-half) share in the suit item No.1 to 4 properties.

Draw Preliminary decree accordingly.

In view of the facts and circumstances there is no order as to costs as the plaintiffs and defendants are relatives and are still holding the property in the nature of the joint family property.

Put up the case for drawing final decree on 31/01/2024.

(Dictated to the Stenographer, transcribed and typed by her on the computer, corrected by me and then pronounced in the Open Court on this the 11th day of January, 2024)

(Aditya R. Kalal)
Prl. Civil Judge & JMFC., Ron
C/c. Addl. Civil Judge & JMFC., Ron



A N N E X U R E

1. List of witnesses examined on behalf of plaintiffs:

P.W.1 : Sumangala A. Kadiyavar

2. List of documents exhibited on behalf of plaintiffs:

Ex.P1 to 3 : RTC extracts

Ex.P4 : VPC extract

Ex.P5 to 7 : MR

Ex.P8 to 10 : Statements of Account

3. List of witnesses examined on behalf of defendants:

Nil

4. List of documents exhibited on behalf of defendants:

Nil

(Aditya R. Kalal)

**Prl. Civil Judge & JMFC., Ron
C/c. Addl. Civil Judge & JMFC., Ron**