

IN THE COURT OF CIVIL JUDGE & J.M.F.C, AT ARKALGUD

Present: Girisha.B.K B.Sc.,LL.B,
Civil Judge & J.M.F.C
Arkalgud.

:: O.S.No 276/2005:

Dated this the day of 04th December 2015.

Plaintiff's	:1)	Jayamma W/o Puttaraju, About 40 years, Masarangala village, Mallipatna Hobli, Arkalgud Taluk, Hassan District.
	2)	Puttamma W/o Swamygowda, About 70 years, H.R.P. quatress, Gorur, Hassan Taluk, Hassan District. (Sri Kithoor Dharmappa , Advocate)
		Vs
Defendant	: 1)	M.C. Erappa S/o Late Channabasavegowda, About 58 years, Masarangala village, Mallipatna Hobli, Arkalgud Taluk Hassan District. (Sri A.R. Janardhana gupta, Advocate)

Date of Institution of suit : 12-12-2005

Nature of suit : Partition and Separate Possession

Date of commencement of recording of evidence : 27-08-2012

Date on which the judgment was pronounced : 04-12-2015

Total duration : Days : months: years

22 11 09

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

This is the suit for the relief of Partition and Separate Possession for the suit schedule property.

2. The brief Facts of the case :-

The suit schedule property are belongs to Channabasavegowda, who is the fathers father of the plaintiff. Channabasavegowda acquired right over

the suit schedule property by way of partition between Channabasavegowda and Swamygowda. And some of the properties are purchased property of the Channabasavegowda. During the life time of Channabasavegowda, Channabasavegowda enjoyed the property.

The house property has been built by the 1st defendant out of the income of the joint family. And the plaintiff has having ½ share in the suit schedule property and there is no partition of the property. Hence this is the suit for partition and separate possession over the suit schedule property.

- 3) Suit summons issued to the defendant. Defendant appeared through their counsel and filed written statement.

The defendant Submitted that, the defendant in the year 1978 lends all the shares which the plaintiff is entitle in the properties.

The defendant has been constructed out of his toilsome earnings and the plaintiff has no right over the house, which the defendant has been built.

The partition of the suit schedule property already made hence further demand for partition would not arise with an ulterior motive this suit has been filed and prayed dismissal of the suit.

- 4) Plaintiff Jayamma examined as PW-1 and cross examined by defendant. Further cross examination of defendant taken as nil.
- 5) Defendant M.C. Erappa examined as DW1. DW1 cross exceed by the plaintiff .

- 6) The document Ex P 1 to Ex P 28 marked in favour of the plaintiff.
- 7) The no Document marked in favor of the defendant.
- 8) Heard Arguments on both sides.
- 9) **Based on the pleadings the following issues are framed.**

ISSUES

1. Whether the plaintiff proves that the suit schedule properties are all belonged to her grand paternal grand father late Chennabasavegowda ?
2. Whether the plaintiff proves that herself and the defendants are the joint co-owners of the suit schedule properties?
3. Whether the plaintiff proves that the suit schedule properties are liable to be partitioned by metes and bound between herself and defendants ?
4. Whether the 1st defendant proves that item No. 1 of the schedule properties is his self acquired property ?
5. Whether the 1st defendant proves that the schedule properties are all already partitioned between himself and the plaintiff during the year 1978 ?

6. Whether the plaintiff proves that she is entitled to separate possession of her alleged 4/9th share in the schedule properties ?

7. What Decree or Order ?

10) My Answer to the above point is

Point No. 1	:- Affirmative
Point No. 2	:- Affirmative
Point No. 3	:- Affirmative
Point No. 4	:- Negative
Point No. 5	:- Negative
Point No. 6	:- Affirmative
Point No. 7	:- As per final order

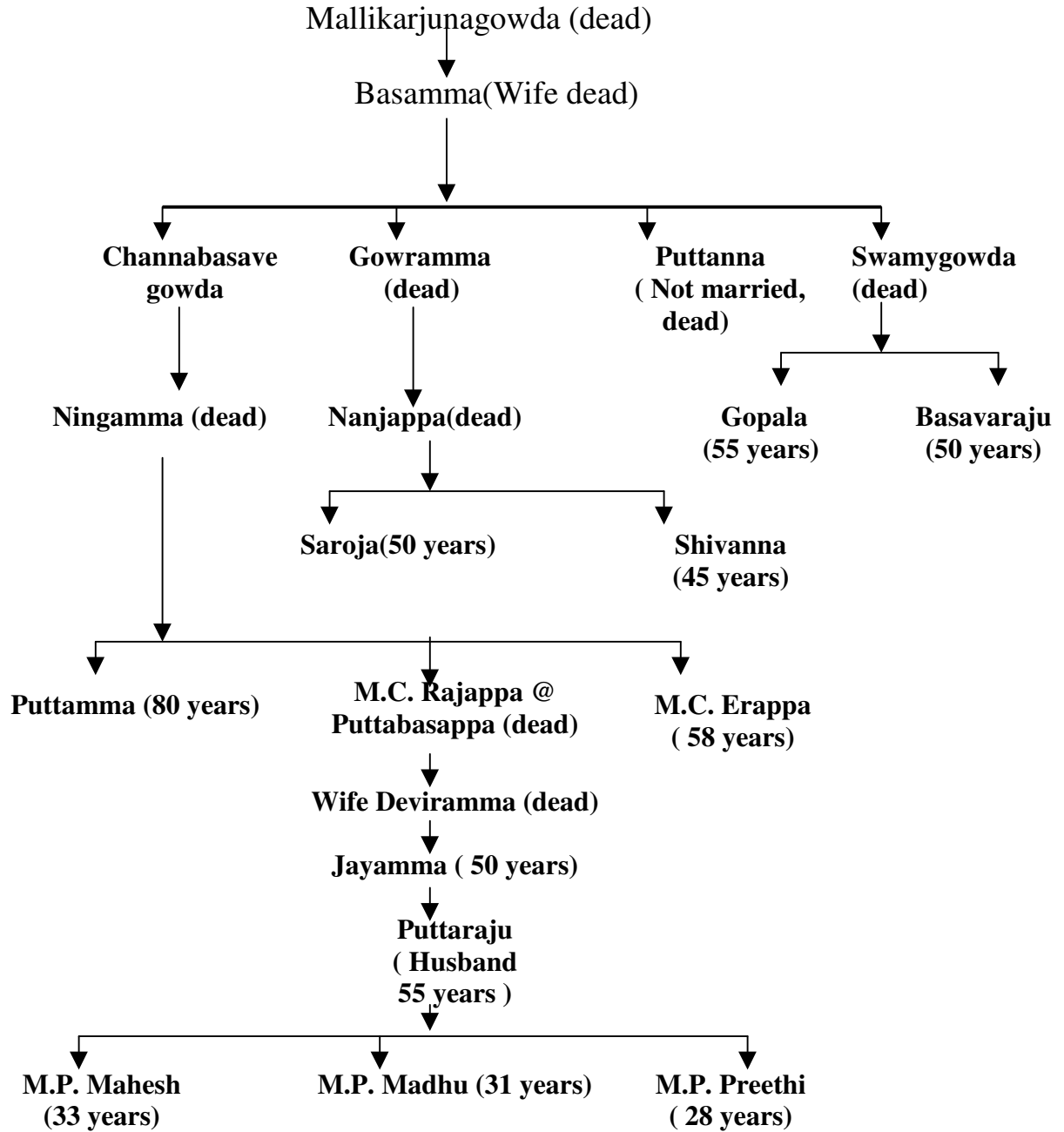
for the following

:: REASONS ::

11) Point No. 1 2, 3, 6 : Point No. 1, 2, 3 and 6 are taken together for discussion to avoid repetition of the facts.

The plaintiff deposed that, the plaintiff is entitle for 1/3 share in the suit schedule property. The schedule which has been mentioned in survey number 11, measuring 2 acre 10 guntas of land and in survey number 12, measuring 32 guntas of land and in survey number 51/6, measuring 33 guntas of land, and in survey number 52/9, measuring 2 acre 20 guntas of land and in survey number 84/1, measuring 9 guntas of land, and in survey number 83/3 measuring 02 guntas of land, and in survey number 4/3, measuring 2 acre 15 guntas of land and the house property measuring East-West 50 feet, North-South 50 feet.

The genealogy which has been stated by the plaintiff is



The plaintiff who has been suggested to the PW-1, Swamygowda and Basavaraja executed the relinquishment deed 12.01.2006, over his right over the suit schedule property.

The document Ex P 28 which transpires that deed has been executed by children of Swamygowda.

The defendant deposed that, the defendant has lend the share in the suit schedule property. No supporting document to corroborate the facts which the defendant asserted. The Khata of the suit schedule item number 1, 2, 3, 4, 5 and 6 have been mutated in the name of the defendant as ಪಾತಿ Khata which transpires in the column no. 10 of the Ex P-1, Ex P-2, Ex P-3, Ex P-4, and Ex P-6 .

The Ex P-7 which is the demand registered extract the name of the defendant which has been mentioned Ex P-7, the extent of the property and who has built the house in the property of Ex P-7 no document before the court. When the defendant himself admitted that, the share in the property has been lent to the plaintiff. And no document before the court that the share has been obtained by the plaintiff. The relation ship of the parties is not in dispute the Ex P-1, Ex P-2, Ex P-3, Ex P-4 and Ex P-6 which stands in the name of the defendant and no evidence with regard to the lent of the share over these properties. And the children of Swamygowda they have been executed relinquishment deed of their right over the suit schedule property. Hence they are not having right

to entitle share over the suit schedule property,
Hence plaintiff is entitle for the share in the suit
schedule property. Hence I answered in the point
number 1 ,2 ,3 and 6 affirmative.

- 12) **Point number 4 and 5** : the plaint schedule item
number 1 property bearing survey number 11,
measuring 2 acre 10 guntas of land stands in the
name of defendant. The document ex p1 transpires
the khata has been mutated as per M.R. 1/82-83, as
ಪಾತಿ Hence the plaint item schedule property is not
self acquired property of the defendant. And there is
no documentary evidence to prove that the suit
schedule properties already partitioned between
plaintiff and defendant. Hence I answered point
number 4 and 5 in negative.

13) **Point number 7** : As per the final orders.

: Orders :

The suit of the plaintiff decreed with costs.

The plaintiff No. 1 and plaintiff No. 2 each entitle 1/3 share in the plaint schedule item number 1, 2, 3, 4, 5 and 6.

The suit against plaint schedule item number 7 is rejected.

Draw preliminary decree accordingly.

(Dictated to the stenographer transcribed by him, transcript revised, corrected and then pronounced by me in the open court 04th day of December 2015)

(Girisha.B.K)
Civil Judge & J.M.F.C,
A r k a l g u d.

::ANNEXURES::

LIST OF WITNESS EXAMINED BY THE PLAINTIFF:

PW.1 : Jayamma

LIST OF DOCUMENTS MARKED FOR THE PLAINTIFF:

Ex.P.1 to 6	:	Certified copy of R.T.C. documents
Ex.P.7	:	Certified copy of Demand register
Ex.P.8 & 9	:	Certified copy of RTC document
Ex.P.10 to Ex 18	:	Certified copy of Hand written RTC
Ex.P.19 to Ex 24	:	Certified copy of Index of land.
Ex.P.25	:	Certified copy of Records of Rights
Ex P 26	:	Certified copy of sale deed
Ex P 27	:	Certified copy of the Demand register
Ex P 28	:	Certified copy of relinquishment deed

LIST OF WITNESS EXAMINED BY THE DEFENDANT:

DW1	:	M.C. Erappa
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LIST OF DOCUMENTS MARKED FOR THE DEFENDANT:

: Nil :

Civil Judge & J.M.F.C,
A r k a l g u d.