

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

PRESENT : Sri. Siddanagouda patil. T, B.A.,L.L.M
Civil Judge & JMFC.,
Arakalgud

::O.S.No. 124/2009::

Dated this the 21st day of April 2018

Plaintiff : Bhagyamma W/o Rajegowda,
Age 38 years,
R/o Lakkanahalli Village,
Konanur Hobli, Arakalgud Taluk,
(Sri A.P. Sathyanarayana, Advocate)

-Vs-

Defendants : 1. Shidlegowda S/o Marigowda,
aged about 85 years,
Dead

2. Renukamma
W/o Puttaraju,
aged about 40 years,
R/at Konanur Hobli,
Arakalgud Taluk.

(Defendant No.1 is dead
(Defendant No.2 by Kithoor Dharmappa,
Advocate)

Date of Institution of suit : 26/05/2009

Nature of suit : Partition and
Separate Possession

Date of commencement of
Recording of evidence : 20/04/2012

Date on which the judgment
was pronounced : 21/04/2018

Total duration : Days : months: years
15 10 07

JUDGMENT

This suit is filed for the relief of partition and separate possession of her share in the suit schedule properties by metes and bounds.

2. Brief facts of the case of the plaintiff in additional as follows:

The plaintiff averred that plaintiff and 2nd defendant are the only daughters to the 1st defendant and the defendant No.1 having no other legal heirs. The plaintiff and defendant are having the joint and ancestral properties. Some of the suit schedule properties has been purchased in the name of 1st defendant by selling the joint and ancestral properties i.e. 4 Acres of land in Muddanahalli Village, 20 guntas of land in Konanur and the house including vacant space in V.G.Koppalu. Soon after the sale all the suit schedule properties has been enjoyed as joint family properties by having right possession

and interest by the plaintiff and defendants. In the suit schedule properties valuable trees have been grown i.e. 60 coconut trees, 20 teak trees and other 60 trees. There is no good relationship between plaintiff and defendants. To defraud the plaintiff the defendants are trying to sell those trees by removing the same. Even though the plaintiff approached the defendants for partition and separate possession the defendants have neglected and denied the right of plaintiff. Hence this present suit claiming 1/3rd share, in the suit schedule properties.

3. After service of summons, defendant No.2 has not appeared and placed exparte. Defendants No. 1 appeared through his counsel and filed his written statement and admitted the relationship and contended that suit is not maintainable either in law or facts. The plaintiff has not approached the court with clean hands. Plaintiff is not entitled for any share in the suit schedule properties. The schedule properties have been acquired by the 1st defendant with his own earnings and from the date of sale he is having right tittle and possession. The Khatha stood in his

name and he has been paying tax regularly. In the year 1987 plaintiff has married to one Rajegowda S/o Thimmegowda of Nadappanahalli Village, K.R. Nagara Taluk, Mysore District from the date of marriage the plaintiff is residing in Rajegowda's house. No family member has contributed to purchase the suit schedule properties. Hence, the plaintiff having no iota of right title and interest. Plaintiff brought the suit with mala fide intention to get wrongful gain. There is no cause action for the suit. Hence prayed to dismiss the suit.

4. Heard the learned counsel appearing for the plaintiff and posted the matter for judgment.

5. On the basis of the pleadings, the following issues have been framed.

- 1. Whether the plaintiff proves that herself and defendants constitute joint Hindu Family and she is the member of the said Joint Hindu family?*
- 2. Whether the plaintiff proves that suit properties are the joint family properties liable for partition?*

3. *Whether the defendant No.1 proves that the suit schedule properties are his self acquired properties?*
4. *Whether the plaintiff is entitled for 1/3 share in the suit schedule properties?*
5. *What order or decree?*

6. In order to prove above issues, the plaintiff got herself examined as PW-1 and got marked the documents as Ex-P.1 to Ex-P.8. On the other hand, the 1st defendant has not cross examined the PW-1 and also not led defense evidence.

7. Heard the arguments of counsel for plaintiff and perused the entire material placed on records.

8. My answer to the above points is as under:

Issue No. 1: In the Affirmative

Issue No. 2: In the Affirmative

Issue No. 3: In the Negative

Issue No. 4: In the Affirmative

Issue No. 5: As per the final order

REASONS

9. **Issues No.1 to 4:** Since these issues are inter-related with each other, they are hereby discussed commonly in order to avoid repetition of facts.

10. The defendant No.1 admitted the relationship with plaintiff and defendant No.2. It is the case of the plaintiff that, the suit schedule properties are the ancestral and joint family properties and claims her share in the suit schedule properties. In the affidavit filed in lieu of her examination in chief, she reiterated the facts narrated in her plaint and stated that, the suit schedule properties are the joint and ancestral properties and the relationship between the herself and defendants are not in good terms and to defraud her right over the suit schedule properties, the defendants have tried to remove and sell the valuable trees existed on the suit schedule properties. By perusal of the exhibits furnished by the plaintiff in the RTC extracts, it is notice that item No. 1 to 6 of the suit schedule properties and house property including 1

Square of machine house i.e. Item No.7 and two barrel houses in Khatha No. 79 i.e. item No.8, the Demand Register stands in the name of defendant No.1 who is non other than the father of plaintiff and 2nd defendant.

11. It is the case of the 1st defendant that, the suit schedule properties are the self acquired properties earned by his own income. But it is well established principle of law that, one who asserts the properties are self acquired, he has to prove the same. Here the 1st defendant files his written statement by putting forward his defense but not contested the suit and not rebutted the version of the plaintiff with cogent evidence. It is also pertinent to note here that, when the suit is pending consideration the defendant No.1 has been demised and the plaintiff files a memo stating that the plaintiff and defendant No.2 are only legal heirs to the defendant No.1. It is also pertinent to note here that the defendant No.2, the sister of plaintiff has not come before this court after service of suit summons and placed exparte. Therefore, the defendants have not contested the suit on merit and it is the **Principle of**

‘ **Hindu Law** ‘ that when the existence of a joint family is not disputed, property held by the family would obviously assume the character of joint family property. Here the 1st defendant has been demised, the plaintiff and defendant No.2 herein are only the legal heirs to the deceased defendant No.1 and they are the only successors to the property of the defendant No.1. Hence the argument of the learned counsel for plaintiff that, plaintiff and defendants share will get increases by way of succession and the share of the plaintiff will increase from 1/3 to 1/2 shall be accepted. In the above facts and circumstances. I answer issue No.1, 2 and 4 in positive and issue No.3 in negative.

12. Issue No.5: In view of my findings on the above issues, I proceed to pass the following:

ORDER

Suit of the plaintiff is hereby decreed. The Plaintiff is entitled for 1/2 share in the suit schedule properties.

No order as to cost in the fact and
circumstances of the case.

Draw preliminary decree accordingly.

(Dictated to the stenographer directly on to the computer, transcript revised, corrected and then pronounced by me in the open court this the 21st day of April 2018)

**(Sri Siddanagouda Patil T.)
IInd Additional Civil Judge
and JMFC, Arakalgud.**

::ANNEXURES::

LIST OF WITNESS EXAMINED BY THE PLAINTIFF:

P.W. 1 : Bhagyamma

LIST OF DOCUMENTS MARKED FOR THE PLAINTIFF:

Ex.P.1 to P.5 : RTC Extracts
Ex.P.6 : Tax Paid Receipt
Ex.P.7 : Demand Register Copy
Ex-P.8 : Genealogically Tree

LIST OF WITNESS EXAMINED BY THE DEFENDANT:

NIL

LIST OF DOCUMENTS MARKED FOR THE DEFENDANT:

NIL

**(Sri Siddanagouda Patil T.)
IInd Additional Civil Judge
and JMFC, Arakalgud.**