

KAHS400004632022



Presented on : 12-04-2022
Registered on : 12-04-2022
Decided on : 06-01-2024
Duration : 01 year, 08 months, 25 days

IN THE COURT OF SENIOR CIVIL JUDGE AND J.M.F.C.
AT ARSIKERE

:PRESENT:

Smt. Anitha G., B.Com., L.L.B., DCS,
Senior Civil Judge & JMFC,
Arsikere.

DATED ON THIS THE 6th OF JANUARY, 2024

O.S. No.51/2022

- Plaintiffs :
- 1) Smt.Chandrakala W/o Vasanthkumar,
Aged about 54 years,
R/o Kunduru Village,
Kibbanahalli Hobli, Tiptur Taluk.
 - 2) Smt.Hemavathi W/o Mahesh,
Aged about 48 years,
R/o Shettihalli Village,
Kibbanahalli Hobli, Tiptur Taluk.

(By Sri K.A.R., Advocate)

-V/s-

- Defendants :
- 1) Smt.Gayathri W/o Late Manjunath,
Aged about 40 years.
 - 2) Thejas,
Aged about 14 years.

- 3) Kum.Anjali,
Aged about 16 years.

Defendants 2 and 3 are the children of
Manjunath,
Minors, Represented by their mother
Gayathri, R/o Yadavanahalli Village,
Gandsi Hobli, Arsikere Taluk.

(By Sri Y.C.R., Advocate)

Nature of suit	:	For partition and Separate possession
Date of commencement of recording evidence	:	21.10.2022

(Smt. Anitha G)
Senior Civil Judge & JMFC.,
Arsikere.

J U D G M E N T

The plaintiffs have filed the present suit seeking the relief of partition and separate possession of their 1/3rd share in the suit schedule properties by metes and bounds. The plaintiffs have sought for mesne profits and cost.

2. Case of the Plaintiffs:

The suit schedule properties are properties bearing Sy.No.80/1 measuring 1 acre 37 guntas and 52/3 measuring 2 acres 7 guntas of Yadavanahalli village, Gandsi Hobli, Arsikere Taluk.

3. It is the case of the plaintiffs that the plaintiffs and late Manjunatha, who is the husband of 1st defendant and father of the other defendants, are the children of one Narasimhachar of Yadavalli

village. The suit schedule properties are the ancestral joint family properties of the plaintiffs and late Manjunatha. Plaintiffs and late Manjunatha were in joint possession and enjoyment of the suit schedule properties. During the lifetime of Narasimhachar, he solemnized the marriage of the plaintiffs. About 15 years prior to filing of the suit Narasimhachar died leaving the plaintiffs and late Manjunath as his only surviving legal heirs. Manjunath died two years prior to filing of the suit leaving behind the defendants as his legal heirs. According to the plaintiffs, as the suit property is their ancestral properties, they are entitled to a 1/3rd share in the same along with the defendants. About 2 months prior to filing of the suit, when the petitioners went to the house of the defendants, they did not treat them properly. They asked the plaintiffs as to why they had come and when the plaintiffs stated that they are also in possession and enjoyment of the suit property, the defendants picked up a quarrel with the plaintiffs. Due to this conduct, the plaintiffs got suspicious and took the RTC extracts and came to know that the 1st defendant had changed the khatas to her name by way of inheritance. According to the plaintiffs, the said revenue mutation entries do not bind the plaintiffs. Hence, the plaintiffs have filed the present suit.

4. Subsequent to filing of the suit, summons were sent to the defendants. Though defendants have appeared before the Court through their counsel but failed to file their written statement.

5. In order to prove their case, plaintiffs have examined the 1st plaintiff as PW.1. She has produced and marked 5 documents as Ex.P.1 to 5.

6. Heard arguments.

7. Perused the oral and documentary evidence on record.
8. On the basis of above facts, the points that arise for my determination are as under:-

POINTS

- 1) Whether the plaintiffs prove that they constitute a Hindu Undivided joint family with the defendants and that suit schedule properties are their joint family properties?
- 2) Whether the plaintiffs are entitled to the relief sought for?
- 3) What order or decree?

9. Based on the material evidence available on record, I answer the above Points as under:-

Point No.1 :- In the **Negative**

Point No.2 :- In the **Negative**

Point No.3 :- As per final order
for the following:

REASONS

10. **Point No.1 and 2**:- These two points are answered together as they involve discussion on common facts.

11. It is argued by the learned counsel for the plaintiffs that the plaintiffs and late Manjunatha, who is the husband of 1st defendant and father of the other defendants, are the children of one Narasimhachar of Yadavalli village. The suit schedule properties are the ancestral joint family properties of the plaintiffs and late

Manjunatha. Plaintiffs and late Manjunatha were in joint possession and enjoyment of the suit schedule properties. During the lifetime of Narasimhachar, he solemnized the marriage of the plaintiffs. About 15 years prior to filing of the suit Narasimhachar died leaving the plaintiffs and late Manjunath as his only surviving legal heirs. Manjunath died two years prior to filing of the suit leaving behind the defendants as his legal heirs. According to the plaintiffs, as the suit property is their ancestral properties, they are entitled to a 1/3rd share in the same along with the defendants. About 2 months prior to filing of the suit, when the petitioners went to the house of the defendants, they did not treat them properly. They asked the plaintiffs as to why they had come and when the plaintiffs stated that they are also in possession and enjoyment of the suit property, the defendants picked up a quarrel with the plaintiffs. Due to this conduct, the plaintiffs got suspicious and took the RTC extracts and came to know that the 1st defendant had changed the khatas to her name by way of inheritance. According to the plaintiffs, the said revenue mutation entries do not bind the plaintiffs. Hence, the plaintiffs have filed the present suit.

12. In this case, it is seen that the plaintiffs have produced and marked 5 documents as Ex.P.1 to P.5. Ex.P.1 is the death certificate of Manjunath S/o Narasimhachari and Susheelamma. Here it is seen that the 1st defendant is the wife of deceased Manjunath. Ex.P.2 is M.R.No.H-12/2011-12. Here it is seen that Sy.No.80/*/1 was mutated from the name of Sannathimmachari S/o Byatachari to the name of Narasimhachar S/o Sannathimmachari to an extent of 1 acre 37 guntas. Ex.P.3 is M.R.No.H-2/2020-21. Here it is seen that the properties stood in the name of deceased Manjunath S/o Late

Narasimhachari and from him the property has been mutated into the name of the 1st defendant in respect of Sy.No.80/*/1 and 52/*/3 to an extent of 1 acre 37 guntas and 2 acres 7 guntas respectively. Ex.P.4 and P.5 are the RTC extracts of Sy.No.80/*/1 and 52/*/3 which shows that both the survey numbers stand in the name of the 1st defendant to an extent of 1.37 acres and 2.07 acres respectively. In this case, it is seen that the plaintiffs have not produced any genealogical tree in respect of Narasimhachar. There is nothing on record to show that the plaintiffs are the daughters of Narasimhachar and sisters of Late Manjunath. The plaintiffs have not produced any school records or other documents to show that they are children of Narasimhachar and his wife Sushelamma. Further, the plaintiffs own record shows that suit item No.1 property has been inherited by deceased Narasimhachar from his father while there is no document on record to show that suit item No.2 property is also inherited property or that it has been acquired from and out of the ancestral property's income. Under Hindu Law, there is presumption with regard to jointness of the family but not with regard to the family holding properties and properties earning income. The one who claims share by contending that the properties are ancestral properties or that the properties have been acquired out of income of the joint family property have to prove the same. Here as discussed supra, there is no scrap of paper on record to show that the plaintiffs and defendants are either members of joint family or the legal heirs of deceased Narasimhachar. There are no documents to substantiate the claim of the plaintiffs either under Section 6 of the Hindu Succession Act or under Section 8 of the Hindu Succession Act. Hence, it is seen that the plaintiffs have failed to prove their contentions that they being the

legal heirs of deceased Narasimhachar are entitled to 1/3rd share in the suit schedule properties along with the defendants by metes and bounds. **Accordingly, I answer Point Nos.1 and 2 in the Negative.**

13. **Point No.3:** For the reasons stated above, I proceed to pass the following:-

ORDER

The suit of the plaintiffs is hereby dismissed.

No order as to costs.

Draw up the decree accordingly.

(Dictated to the Stenographer, directly typed by him on Computer,
revised by me and then pronounced by me in the open Court on this
the 6th day of January, 2024)

(Smt.Anitha G.)
Senior Civil Judge & JMFC,
Arasikere.

:ANNEXURE:

List of witnesses examined on behalf of plaintiffs:

PW.1 : Smt.Chandrakala

List of documents produced on behalf of plaintiffs:

Ex.P.1 : Death certificate of Manjunath
Ex.P.2 : M.R.No. H-12/2011-12
Ex.P.3 : M.R.No. H-2/2020-21
Ex.P.4 & 5 : RTC extracts

List of witnesses examined on behalf of defendants:

-NIL-

List of documents produced on behalf of defendants:

-NIL-

Senior Civil Judge & JMFC,
Arasikere.