

KAHS510003342023



Presented on : 02-03-2023
Registered on : 02-03-2023
Decided on : 08-01-2025
Duration: 1 year, 10 months, 5 days

IN THE COURT OF CIVIL JUDGE AND JMFC., BELUR

Present:-

**Sri. Nagendra.,
B.A., LL.B.,
Civil Judge and JMFC., Belur.**

Dated this, the 8th day of January, 2025

O.S./108/2023

Plaintiffs:

1. Ramya D/o Late.Lokeshgowda.
Aged about 20 years,
2. Rakshitha D/o Late.Lokeshgowda,
Aged about 18 years,
Both are R/at: Church Road,
Thogarihankal Circle,
Chikamagalur.

(By Manjula Karlekar, Advocate for Plaintiffs)

Versus

Defendants:

1. Sri.Basavaraju S/o Shankaregowda,
Aged about 44 years,

2. Shri.Ramesh S/o Shankaregowda,
Aged about 40 years,
3. Smt.Lakshamma W/o Late.Shankaregowda,
Aged about 62 years,
All are R/at: Mallanahalli Village,
Kasaba Hobli, Belur Taluk,
Hassan District.

(Exparte)

Nature of suit	Partition and Separate Possession
Date of institution of the suit	02-03-2023
Date of the commencement of recording of the evidence	26-03-2024
Date of the closing of evidence	26-03-2024
Date on which the Judgment was pronounced	08-01-2025
Total duration of the suit	Years Months Days 01 10 05

J U D G M E N T

The plaintiffs have filed the present suit against the defendants for the relief of partition and separate possession in respect of suit schedule properties.

2. The brief facts of the case of the plaintiffs is as under;

The specific case of the plaintiffs is that, their father and mother namely Uma and Lokeshgowda have got married about 22 years back in the presence of elders of the Village and they are the children of said Uma and Lokeshgowda. In the year 2017, their father Lokeshgowda died. Their mother Uma has grown up them by doing house hold work. The 1st plaintiff is studying in B.Com and 2nd plaintiff is studying in 2nd PUC. That their grandfather Shankaregowda has four children. Their father Lokeshgowda is the elder son and defendant No.1 and 2 are their uncles. The defendants without including the name of their father in the Genealogical Tree are enjoying the ancestral joint family properties. Therefore, they have given a complaint to the police Station. In the police Station, the defendants have agreed to give Rs.5,000/- per month to them, but not paid the said amount. Now they are studying and therefore more amount is required for their higher studies and maintenance of their life. So many occasions, they have requested the defendants to effect partition

and allot their shares. Since their mother Uma is an illiterate lady and with an intention to play a fraud on her, the defendants always warned her mother not to come to their Village. The defendants are also enjoying the property left by the brother of their Grandfather. Now their mother is not feeling well and therefore, unable to lead life. The defendants by borrowing loan in the Bank are leading their life happily. The defendants have refused to effect the partition and separate possession in the suit schedule properties after the death of their father. Hence, plaintiffs are constrained to file the present suit.

3. In spite of service of summons, the defendants remained absent and hence they have been placed *ex parte*.

4. The plaintiffs in order to prove their case, plaintiff No.1 examined as P.W.1 and Ex.P.1 to Ex.P.9 documents have been got marked and closed their side.

5. Heard learned counsel for the plaintiffs.

6. After perusal of pleadings and records of the case, the following points would arise for my consideration.

POINTS

1. Whether the plaintiffs proves that the suit schedule properties are the ancestral and joint family properties of them and defendants?
2. Whether the plaintiffs proves that they are entitled for share in the suit schedule properties?
3. Whether the suit of the plaintiffs is not maintainable for non joinder of necessary parties in the suit?
4. Whether the plaintiffs are entitled for the reliefs as sought for?
5. What order or decree?
7. My findings on the above points are as under:

Point No.1: In the Affirmative

Point No.2: In the Negative

Point No.3: In the Affirmative

Point No.4: In the Negative

Point No.5: As per final order for the following:-

REASONS

8. **Point No.1 to 3** : I have taken all these points together for common discussion as they are interlinked with each other in order to avoid repetition of facts and reasons.

9. The plaintiffs in order to prove their case, plaintiff No.1 examined as P.W.1 and Ex.P.1 to Ex.P.9 documents have been got marked. Ex.P.1 is Death Certificate, Ex.P.2 is Genealogical Tree, Ex.P.3 is RTC bearing Sy.No.214 situated at Muthuganne Village, Kasaba Hobli, Belur Taluk, Ex.P.4 is RTC bearing Sy.No.80/6 situated at Manchanayakanahalli Village, Kasaba Hobli, Belur Taluk, Ex.P.5 is RTC bearing Sy.No.61/2 situated at Manchanayakanahalli Village, Kasaba Hobli, Belur Taluk, Ex.P.6 is RTC bearing Sy.No.48/6 situated at Manchanayakanahalli Village, Kasaba Hobli, Belur Taluk, Ex.P.7 is RTC bearing Sy.No.56/4 situated at Manchanayakanahalli Village, Kasaba Hobli, Belur Taluk, Ex.P.8 is RTC bearing Sy.No.57/4 situated at Manchanayakanahalli Village, Kasaba Hobli, Belur Taluk, Ex.P.9 is RTC bearing Sy.No.199/9 situated at Muthuganne Village, Kasaba Hobli, Belur Taluk.

10. The specific case of the plaintiff is that, their father and mother namely Uma and Lokeshgowda have got married about 22 years back in the presence of elders of Village and they are the daughters of said Uma and Lokeshgowda. That their

father died in the year 2017 leaving behind them and their mother as his legal heirs. Now, they are studying in B.Com and 2nd PUC respectively. That their grandfather Shankaregowda has four children. Their father Lokeshgowda is the elder son and defendants are their uncles. The defendants without including the name of their father in the Genealogical Tree are enjoying the ancestral joint family properties. They have given complaint to the police Station and in the police Station, the defendants have agreed to give Rs.5,000/- per month to them, but not paid the said amount. Since they are studying and for their maintenance of life, more amount is very much necessary. Their mother has grown up them by doing house hold works. So many occasions, they have requested the defendants to effect partition and allot their legitimate shares in the suit schedule properties. But the defendants have refused to effect the partition. Hence, plaintiffs prays to decree the present suit.

11. I have perused oral and documentary evidence led by plaintiffs. I have perused Ex.P.1. On perusal of Ex.P.1, it appears that, the father of plaintiffs has died on 29.05.2017 leaving

behind plaintiffs and their mother as his legal heirs. I have perused Ex.P.2. On going through Ex.P.2, it appears that one Shankaregowda had wife namely Lakshamma who is the 3rd defendant in this case. The said Shankaregowda and 3rd defendant have 4 children namely Lokesh, who is the father of plaintiffs, Basavaraju 1st defendant, Ramesh 2nd defendant and daughter by name Shanthy. I have perused Ex.P.3 to Ex.P.9. On perusal of Ex.P.3 to Ex.P.9, it clearly discloses that after the death of grandfather of plaintiffs and father of defendant No.1 and 2 and husband of defendant No.3 namely Shankaregowda, the name of defendant No.1 to 3 have been entered in the RTC of suit schedule properties on the basis of inheritance. On perusal of E.P.3 to Ex.P.9, clearly discloses that the suit schedule properties are the ancestral and joint family properties of plaintiffs and defendants. But the plaintiffs have not made the daughter of defendant No.3 and sister of defendant No.1 and 2 as party in the suit.

12. On going through Ex.P.2, it clearly forthcoming that Shankaregowda and defendant No.3 have four children. But the

plaintiffs have not made daughter of 3rd defendant and sister of 1st and 2nd defendants namely Shanthy as party in the suit. In a suit for partition, all the necessary parties and properties has to be included in the suit. Otherwise, no effective decree could be passed. If the plaintiffs have not made any person as party in the suit, they have to state the reason why they have not made as party in the suit.

13. In the case on hand, as per Ex.P.2, the daughter of defendant No.3 namely Shanthy is alive. In spite of it, the plaintiffs have not made the daughter of 3rd defendant and sister of 1st and 2nd defendant as party in the suit. Because the daughter as per Hindu Succession Act 1956 has got equal share in the suit schedule property. If the suit is decreed as prayed, the said daughter of 3rd defendant and sister of 1st and 2nd defendant will be deprived of her share. The plaintiffs knowing fully aware of said Shanthy, who is the daughter of 3rd defendant and sister of 1st and 2nd defendant, have not made as necessary party in the suit. In the absence of necessary party, no effective decree could be passed.

14. In the case on hand, the plaintiffs have proved that the suit schedule properties are the ancestral properties of them and defendants. Since the plaintiffs have not made the daughter of 3rd defendant and sister of defendant No.1 and 2 as party, they are not entitled for any share in the suit schedule properties. Hence, **point No.1 is answered in Affirmative, Point No.2 is answered in the Negative and point No.3 is answered in Affirmative.**

POINT NO.4:

15. While answering point No.1 to 3, this court has held that the suit schedule properties are the ancestral joint family properties of plaintiffs and defendants. Further while answering point No.2 and 3, this court has held that though the plaintiffs have proved that the suit schedule properties are the ancestral joint family properties, since the plaintiffs have not made the daughter of defendant No.3 and sister of defendant No.1 and 2 as party in the suit, suit of the plaintiffs is not maintainable and therefore the plaintiffs are not entitled for any share in the suit

schedule properties. Therefore, the plaintiffs are not entitled for any reliefs as sought for. Hence, without much discussing on this aspect, **point No.4 is answered in Negative.**

16. **Point No.5:** For the reasons and discussions made supra, I proceed to pass the following;

ORDER

The suit of the plaintiffs is hereby dismissed.

In view of relationship between the parties, no order as to costs.

Draw decree accordingly.

(Dictated to the Stenographer transcribed and computerized by her, corrected by me and then pronounced in the open court on this, **08th day of January, 2025**)

(Sri.Nagendra)
Civil Judge and JMFC., Belur

ANNEXURE

WITNESSES EXAMINED ON BEHALF OF THE PLAINTIFFS:

P.W.1 : Ramya D/o Late.Lokeshgowda

WITNESSES EXAMINED ON BEHALF OF THE DEFENDANTS:

NIL

DOCUMENTS MARKED ON BEHALF OF THE PLAINTIFFS:

- Ex.P.1 : Death Certificate of Shri.Lokesh
Ex.P.2 : Genealogical Tree
Ex.P.3 : RTC bearing Sy.No.214
Ex.P.4 : RTC bearing Sy.No.80/6
Ex.P.5 : RTC bearing Sy.No.61/2
Ex.P.6 : RTC bearing Sy.No.48/6
Ex.P.7 : RTC bearing Sy.No.56/4
Ex.P.8 : RTC bearing Sy.No.57/4
Ex.P.9 : RTC bearing Sy.No.199/9

DOCUMENTS MARKED ON BEHALF OF THE DEFENDANTS:

NIL

(Sri.Nagendra)
Civil Judge and JMFC., Belur.

**(Judgment signed and pronounced in
the open court vide separate order)**

ORDER

The suit of the plaintiffs is hereby
dismissed.

In view of relationship between the
parties, no order as to costs.

Draw decree accordingly.

(Sri.Nagendra)
Civil Judge and JMFC., Belur.