

**IN THE COURT OF THE ADDL. CIVIL JUDGE & J.M.F.C.,
CHANNARAYAPATNA**

-:: PRESENT ::-

Sri. S. Chinnaswamy

B.A., LL.B.

Addl. Civil Judge & J.M.F.C.,
Channarayapatna.

Dated 5th day of January 2018

O.S. No. 368/2010

Plaintiff : Bhagya W/o Shivaswamy,
Aged about 39 years,
R/o Sharada Nagara,
Tipatur Town and Taluk,
Tumakuru District.

(By Sri. L.P.G. , Advocate)

-V/s-

Defendants : 1. Gangamma W/o Late Boregowda,
Aged about 65 years,

2. Manjegowda S/o Late Boregowda,
Aged about 45 years,

3. Ambika W/o Ramesh
Aged about 38 years,

Defendant No.1 to 3 are
R/o Navile Colony, Bagur Hobli,
Channarayapatna Taluk,
Hassan District.

4. Mahadevamma W/o Basavaraju
R/o Kondajji Village, Dandigana Shivara
Hobli, Tipatur Taluk, Tumakuru District.

(D-1 and 3 by Sri. SAP/MRC, Advocate)
D-2 by Sri. KSA, Advocate)

Date of institution of suit	:	30-08-2010						
Nature of the suit	:	Partition and Separate possession						
Date of recording evidence	:	01-07-2013						
Date of pronouncement of Judgment	:	05-01-2018						
Total duration	:	<table> <tbody> <tr> <td><u>Years</u></td> <td><u>Months</u></td> <td><u>Days</u></td> </tr> <tr> <td>07</td> <td>04</td> <td>05</td> </tr> </tbody> </table>	<u>Years</u>	<u>Months</u>	<u>Days</u>	07	04	05
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(S. Chinnaswamy)
Addl. Civil Judge & J.M.F.C.,
Channarayapatna.

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

It is a suit for partition and separate possession and such other reliefs.

2. ***It is case of the plaintiff that:***

The suit schedule properties are the ancestral and joint family properties of plaintiff and defendants and defendant No.1 is the mother, defendant No.2 is the brother, defendant No.3 and 4 are the sisters of the plaintiff. And father of the plaintiff has died and after the death of father of the plaintiff, there is no partition taken between plaintiff and defendants. And Plaintiff and defendants are continued to be in joint possession in joint family properties and defendant No.3 and 4 are residing in their husband house. The suit schedule properties are standing in the name of defendant No.1 and 3 and suit schedule properties have not been divided between themselves and defendants have changed the katha in their names without knowledge of the plaintiff and without allotting share of the plaintiff, in order to defraud the right of the plaintiff. Hence the suit.

3. On the other hand, the defendant No.1 and 3 have filed their written statement therein denied the entire plaint averments and taken the specific contention that, the suit schedule properties have been

divided between plaintiff and defendants at the advice of the elder of the family and the villagers on dated 03-11-2005. And accordingly, the suit schedule properties have been divided in 3 parts and defendant No.1 has got 1 Acre and 7½ guntas and 2nd defendant has taken 4 Acre 30 guntas and 3rd defendant has got 3 Acre and plaintiff and defendant No.4 have received cash of Rs.80,000/- each as per the advice of elders and villagers of the plaintiff and defendants family and for which the villagers have entered into Paluparikath, accordingly, the defendants have changed katha of the suit schedule properties in their name for which plaintiff husband is also one of the signatory as witness. And there is no cause of action for the suit and suit is barred by law of limitation and plaintiff has filed the suit, only for the Partial Partition without including the property of defendant No.2 and further defendant No.1 and 3 the specific contention that, item No.7 of the suit schedule property is granted in favour of defendant No.1. Hence, it is her self acquired property. The plaintiff and other defendants have no right, title or interest or share over the suit schedule property item No.7. In order to defraud the defendant No.1 and 3 have included the suit schedule property item No.7 and also defendants having ancestral property in Navile village Sy. No. 124/2 which is ancestral house and which is standing in the name of 2nd defendant

wife Sulochana and changed the katha in her name and said property has not been included in this suit, intentionally with collusion of the defendant No.2, plaintiff has not included the said property and also not included the said Sulochana as necessary party to the suit, hence suit is bad for non joinder of the necessary party and also bad for non inclusion of other property. Hence pray for dismiss the suit.

4. On the Basis of the pleadings of both the parties, the following issues were framed by predecessor of this court.

-:: ISSUES ::-

- 1. Whether the plaintiff proves that, suit schedule properties are ancestral properties of plaintiff and defendants?***
- 2. Whether the plaintiff proves that, herself and defendants are joint family members?***
- 3. Whether the 1st and 3rd defendant proves that, on 03-11-2005 there was a partition held between plaintiff and defendants?***
- 4. Whether the plaintiff is entitled for ½ share in the suit property?***
- 5. What order or decree?***

-:: ADDITIONAL ISSUES ::-

- 1. Whether defendant No.1 and 3 prove that suit schedule property item No.7 is self acquired property of defendant No.1?***

2. Whether suit of the plaintiffs is bad for non-joinder of necessary parties?

3. Whether the suit of the plaintiff is bad for partial partition?

5. In order to prove the above issues the plaintiff herself examined as P.W.1 and got marked Ex.P.1 to 3 in her favour. Defendant No.3 herself examined as D.W.1 and examined one witness by name Jayalingegowda as D.W.2 and got marked Ex.D.1 to 16.

6. Having regard to the pleadings, evidence adduced by the both sides and arguments of both sides and examined the materials placed on records, this court findings on the above issues are as hereunder:

Issue No.1	-	In the Affirmative
Issue No.2	-	In the Affirmative
Issue No.3	-	In the Negative
Issue No.4	-	In the Partly Affirmative
Additional Issue No.1	-	In the Negative
Additional Issue No.2	-	In the Negative
Additional Issue No.3	-	In the Negative
Issue No.5	-	As per final order for the following :-

-:: REASONS ::-

7. **ISSUE NO.1 AND 2:-** These two issues are inter-linked, to each other are taken for common discussion to avoid the repetition of facts.

8. That in order to prove the above issues plaintiff herself examined as P.W.1 and she has reiterate the plaint averments in her chief-examination and got marked Ex.P.1 to 3 in her favour.

9. The specific case of the plaintiff that, the suit schedule properties are ancestral and joint family properties of plaintiff and defendants and her father died without dividing the suit schedule properties and all the suit schedule properties are standing in the name of defendant No.1 and plaintiff has demanded the share in the suit schedule properties, defendants have refused to allotted the share. On the other hand, it is specific contention of the defendant No.1 and 3 that, the suit schedule properties item No.7 is the self acquired property of defendant No.1 which is granted by the Government in her favour, hence it is the absolute property and it is not joint family property and further it is specific contention of the defendant No.1 and 3 that, the plaintiff has already taken the share as per Palupatty dated 03-11-2005 as per the partition, the plaintiff has obtained amount of Rs.80,000/- as her share for each defendant.

10. On the other hand, the learned counsel for the defendant has cross examined the P.W.1, in her cross examination it is suggest that, all

the suit schedule properties are the self acquired property of defendant No.1 for which the plaintiff has denied the same and further it is also suggest that 03-11-2005, there was a partition between herself and defendants in which the plaintiff has obtained Rs.80,000/- as her share from each defendants and total amount of Rs.2,40,000/-. Hence she has no right, for which also the P.W.1 has denied the entire suggestions. And further defendant has suggested that, the Sy.No.303 of Navile village measuring 6 Acre 3 guntas has not been included in the suit which fallen to the share of Manjegowda, she admits that, she is claiming only share in the share allotted to the mother of the plaintiff and her sister defendant No.3. On looking to the evidence of P.W.1, it clearly discloses that, the suit schedule properties are the ancestral and joint family properties of plaintiff and defendants. And plaintiff and defendants have not divided the suit schedule properties between themselves. Further the defendant has taken the specific contention that, on dated 03-11-2005 there is a partition taken place between plaintiff and defendants. In support of her contention defendant No.3 examined as D.W.1 and got marked Ex.D.1 to 16 documents. On looking to the Ex.D.1 Unregistered Palupatty dated 03.11.2005, which is executed between defendant No.1 to 3. On looking to the Ex.D.1 further it discloses that, the plaintiff is not the signatory and

also plaintiff is not the party to the said Ex.D.1 alleged partition deed dated 03-11-2005. In support of Ex.D.1 the defendant has examined the one witness by name Jayalingegowda as D.W.2, he also deposed that, on 03-11-2005 in respect of the suit schedule properties there was a partition between plaintiff and defendants. And plaintiff has taken her share of Rs.80,000/- from each defendant No.1 to 3 and her husband is also signatory to the Ex.D.1 Palupatty dated 03-11-2005, but, as per the Partition Deed dated 03-11-2005 Ex.D.1 no share allotted to the plaintiff and also there is no alleged amount has not been paid as per the Ex.D.1 to the plaintiff. Further it is case of the defendant that, as per the partition the defendant have changed the katha of the suit schedule properties as per M.R.No.39/2005-06 and M.R.No.28/2006-07, the suit schedule properties have been standing in the name of defendant No.1 to 4. But as per sec.17 of Indian Registration Act, the partition deed is compulsorily registerable document. On looking to the Ex.D.1 it is unstamped and unregistered document which cannot be looked into and also further it cannot be considered since the plaintiff is not the party to the Ex.D.1 .

11. And Further as per the Ex.D.3 the plaintiff father Boregowda died on dated 28-04-1996 as admitted by both plaintiff and defendants.

The suit schedule properties are the ancestral and joint family properties of plaintiff and defendants. And plaintiff's father died on 28-04-1996 that is prior to amendment of Hindu succession Act 2005 came into force 09.09.2005 as per amendment Act as on commencement of amendment act. Father of the plaintiff must be alive in order to get equal share in the suit schedule properties, but the plaintiff's father died prior to 09-09-2005. In such circumstances, the plaintiff is only entitle for Notional Partition and plaintiff's father has died without dividing the suit schedule properties and it shall be liable to be partition between plaintiff and defendant and also the defendants have utterly failed to prove that, the plaintiff has taken her share by way of money of Rs.80,000/- from each defendant No.1 to 3. In this regard, the defendants have not produced any piece of document to show that, the plaintiff has received her share by way of money. Accordingly, this court has come to the conclusion that, the suit schedule properties are ancestral and joint family properties of plaintiff and defendants. And plaintiff and defendants are in joint possession of the suit schedule properties and also in joint family and as per the contention of the defendants that, the suit schedule properties have been divided as per unregistered and unstamped Partition Deed dated 03-11-2005 and all the revenue documents have been changed in the name of

defendants as per Palupatty, but such revenue entries does not create any right, title over the suit schedule properties exclusively in favour of defendant No.1 to 3. Hence, Issue No.1 and 2 are answered in the **AFFIRMATIVE**.

12. **ISSUE NO.3:-** As discussed in the above issues the defendants have taken the specific contention that, there is a partition between the plaintiff and defendants, in order to prove the same the defendant has produced the Ex.D.1 and 2 are the unregistered and unstamped Palupatty, those documents cannot be looked into for any purpose and those documents does not create any title to the parties thereto. And further the plaintiff is not the party to the Ex.D.1 and 2, if at all any share is allotted to plaintiff by way of money the documents of Ex.D.1 and 2 could had to discloses the same. Accordingly, the defendants have utterly failed to prove that, there was a partition between plaintiff and defendants on dated 03-11-2005. Hence, Issue No.3 is answered in the **NAGATIVE**.

13. **ADDITIONAL ISSUE NO.1:-** It is specific case of the defendant No.1 and 3 that, the suit schedule property item No.7 is self acquired property of defendant No.1, in support of her contention of

defendant has not produced any single document to show that the item No.7 bearing No.124/2 measuring 2 Acre is granted in favour of defendant No.1 and the plaintiff also has not produced any single document to show that, the suit schedule property item No.7 is the joint family property of herself and defendants. Hence suit is respect of item No.7 and 8 are concerned is liable to be dismissed for want of material documents. Accordingly, Additional Issue No.1 is answered in the **NEGATIVE**.

14. **ADDITIONAL ISSUE NO.2**: It is specific case of the defendants that, the suit is bad for non joinder of necessary parties, one Sulochana W/o Manjegowda defendant No.2 and property which is standing in the name of defendant No.2 bearing Sy.No.13 of Navile village and house property has not been included in this suit. That in order to establish this fact, the defendant has not produced any single document to show that, the property bearing Sy.No.13 of Navile village is ancestral property it containing house in the absence such material. This court cannot come to the conclusion that, the property bearing Sy.Num is belongs to family of plaintiff and defendants. And defendants have not established that, the suit is bad for non joinder of

necessary party. And further the said Sulochana is not the necessary party to the suit. Accordingly, Additional Issue No.2 is answered in the **NEGATIVE.**

15. **ADDITIONAL ISSUE NO.3:-** It is specific contention of the defendant that, the plaintiff is colluding with the defendant No.2 has filed the suit without including the share allotted to the defendant No.2, as per the Partition Deed dated 03-11-2005, but as per the discussion made in the issue No.1 to 3, the defendants have failed to prove the alleged Partition Deed dated 03-11-2005 the question of partition taken place between plaintiff and defendants does not arise at all and also the question of share allotted to defendant No.2 does not arise at all and after taking contention by the defendant that, the suit is bad for non inclusion of other properties, plaintiff has got amended include the suit schedule properties item No.5 to 8, when the plaintiff has included all the joint family and ancestral properties in the suit. the question of considering the fact that, suit is bad for Partial Partition does not survive. Hence, Additional Issue No.3 is answered in the **NEGATIVE.**

16. **ISSUE NO.4:-** As discussed in the above issues the plaintiff has proved that, the suit schedule properties are the ancestral and joint family properties of plaintiff and defendants. And Plaintiff and defendants are in joint possession and continued to be in the joint family. And on the other hand, defendants have failed to prove that, there is a partition taken place between plaintiff and defendants on 03-11-2005 and plaintiff father died prior to 09-09-2005, that is amendment to Hindu Succession Act. The plaintiff is entitled to Notional Partition in the share of her father as per ratio of the judgements in ***PRAKASH V/S PULAVATHI*** rendered by the Hon'ble Supreme Court of India. And means profits is concerned it requires separate enquiry and it could be worked out in final decree proceedings and since the parties are joint family members. There is no order as to cost. Accordingly, Issue No.4 is answered in the **PARTLY AFFIRMATIVE.**

17. **ISSUE NO.5:-** For above discussion this court proceed to pass the following;

-:: ORDER ::-

The suit of the plaintiff is partly decreed, in respect of item No.7 and 8 are concern is dismissed.

And further order that defendant No.2 is entitle to 6/10th share and plaintiff, defendant No.1, 3 and 4 are entitle to 1/10th each share of the suit schedule properties.

No order as to cost.

Draw preliminary decree accordingly.

(Dictated to the stenographer and typed by her and then corrected by me, then judgement is pronounced in open court on 5th day of January 2018)

(S. Chinnaswamy)

Addl. Civil Judge & J.M.F.C.,
Channarayapatna.

-:: ANNEXURE ::-

1. List of witnesses examined for plaintiff:-

PW-1 : Bhagya

2. List of documents marked for plaintiff:-

Ex.P-1 : Genealogical Tree

Ex.P.2 & 3 : RTC extracts

3. List of witnesses examined for Defendants : -

DW-1 : Ambika

DW-2 : Jayalingegowda

4. List of documents marked for Defendants : -

Ex.D-1	:	Palupatty dated 03-11-2005
Ex.D-1(a)	:	D.W.1 signature
Ex.D-1(b)	:	D.W.2 signature
Ex.D-2	:	Palupatty dated 05-01-2006
Ex.D-2(a)	:	D.W.1 signature
Ex.D-2(b)	:	D.W.2 signature
Ex.D-3	:	Death Certificate
Ex.D-4 & 5	:	RTC extract
Ex.D-6	:	Genealogical Tree
Ex.D-7	:	Acknowledgment
Ex.D-8	:	Application given by Tahsildar
Ex.D-9 to 12	:	Certificate copy of Mutation Register
Ex.D-13	:	Certified copy of Atlas
Ex.D-14	:	Sketch
Ex.D-15	:	Certified copy of order sheet in O.S.No.31/2003
Ex.D-16	:	Certified copy of Plaint copy in O.S.No.31/2003

(S. Chinnaswamy)

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