

**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 25th day of April 2019

O.S. No.180/2013

Plaintiff : Smt. Manjula D/o Mastigowda,
W/o D.R. Dharma, 26 years,
R/o Honnamaranahalli Village,
Nuggehalli Hobli,
Channarayapatna Taluk.

(By Sri. G.V.V., Advocate)

-V/s-

Defendants : 1. Mastigowda S/o Late Kullegowda,
Aged about 60 years,
2. Latha D/o Mastigowda,
Aged about 40 years,
R/o Darsihalli, Bagur Hobli,
Channarayapatna Taluk.
3. Varalaxmi D/o Mastigowda,
Aged about 35 years,
4. Nagarathna D/o Mastigowda,
Aged about 32 years,
5. Vishkantegowda S/o Mastigowda,
Aged about 28 years,

6. Jyothi W/o Vishkantegowda,
Aged about 25 years,

Defendant No.1, 3 to 6 are R/o
Honnamaranahalli Village,
Nuggehalli Hobli,
Channarayapatna Taluk.

(D-6 By Sri. M.N.B., Advocate,
D-1 to 5 Exparte)

Date of institution of suit	:	15-03-2013		
Nature of the suit	:	Partition & Separate Possession		
Date of recording evidence	:	20-04-2018		
Date of pronouncement of Judgment	:	25-04-2019		
Total duration	:	<u>Years</u>	<u>Months</u>	<u>Days</u>
		06	01	10

(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 such other reliefs.

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

Defendant No.1 is her father, defendant No.2 to 5 are the sisters and brother, defendant No.6 is the wife of defendant No.5. Suit schedule properties are the ancestral and joint family properties of plaintiff and defendants No.1 to 5. The 6th defendant has not been conducting herself as to be legally wedded wife of 5th defendant. She was picking up quarrel for the one and other reason and threatening the 1st defendant to divide the suit schedule properties into two shares and deliver her $\frac{1}{2}$ share of her husband in the suit schedule properties. The 1st defendant being the Manager of the joint family of plaintiff and defendants is looking after the welfare of the joint family and there is no partition taken place between defendant No.1 to 5 either by Registered Partition or by Decree of Civil Court. Hence filed this suit and pray for decree the suit.

3. On the other hand, defendant No.1 to 5 placed exparte. Defendant No.6 has filed her written statement therein,

she has denied the some of the averments made in the plaint and also admitted the several averments made in the plaint and she has admitted that, the suit schedule properties are the ancestral and joint family properties of plaintiff and defendants No.1 to 5 and further contended that, plaintiff and defendant No.2 to 4 are residing their husband house after marriage taken place. Defendant No.6 herein had filed suit in O.S.No.793/2013 on the file of 2nd Addl. Civil Judge and JMFC, Channarayapatna for the relief of partition for which defendant No.1 and 5 herein have consented to decree the suit. Accordingly, court has declared the 6th defendant children as a owner. Accordingly, FDP No.3/2015 has been filed for the Separate Possession of the suit schedule properties and plaintiff never in joint possession and joint family of defendant No.1 to 5 and 6. Plaintiff has not included the other joint family properties of plaintiff and defendants bearing Sy.No.39/3, 52/11, 52/18, 54/3, 54/2, by colluding defendant No.1 to 5 each other have sold the Sy.No.54/3 and 54/2 to her husband of defendant No.3 by name Rajesh and also plaintiff and defendants No.1 to 5 have changed the katha of the suit schedule properties situated at Avverahalli Village in the name of Chandregowda, in order to defraud the defendant No.6 minor

children. Further contended that, plaintiff has relinquished her share in favour of defendant No.1 and 5. Hence, the suit is not maintainable for partial partition and also non inclusion of other joint family properties. Hence, pray for dismiss the suit.

4. On the Basis of the pleadings of both the parties, Predecessor of the office has framed following issues as here under:

-:: ISSUES ::-

- 1. Whether the plaintiff proves that, herself and defendant No.1 to 5 constitute a Hindu Joint family?***
- 2. Whether the plaintiff proves that, suit schedule properties are joint family and ancestral properties of herself and defendants No.1 to 5?***
- 3. Whether defendant No.6 proves that plaintiff relinquished her share in the suit schedule properties to the defendant No.1 and 5 by executing relinquishment deed as contended in para No.7 of written statement?***
- 4. Whether plaintiff is entitled for 1/6th share in the suit schedule properties?***
- 5. Whether plaintiff is entitled for the relief as sought for?***
- 6. What order or decree?***

5. In order to prove the above issues, plaintiff herself examined as P.W.1 and got marked Ex.P.1 to 9 documents in her favour. Defendant No.6 examined as D.W.1 and got marked Ex.D.1 to 15.

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:

<i>Issue No.1</i>	-	<i>In the Partly Affirmative</i>
<i>Issue No.2</i>	-	<i>In the Partly Affirmative</i>
<i>Issue No.3</i>	-	<i>In the Negative</i>
<i>Issue No.4</i>	-	<i>In the Affirmative</i>
<i>Issue No.5</i>	-	<i>In the Affirmative</i>
<i>Issue No.6</i>	-	<i>As per final order for the following :-</i>

: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 these issue, plaintiff herself examined as P.W.1 and got marked Ex.P.1 to 9 documents in her favour, she has reiterated the plaint averments in her chief examination.

9. It is specific case of the plaintiff that, the suit schedule properties are the ancestral and joint family properties of plaintiff and defendant No.1 to 5 and 6th defendant children. On the other hand, the defendant has not disputed the fact that, the suit schedule properties are ancestral and joint family properties of plaintiff and defendants.

10. Further it is contention of the plaintiff that, defendant No.6 was not acting as a duty bound wife to the 5th defendant, she was picking up quarrel one or other reason and also threatening the 1st defendant to divide the suit schedule properties into two shares and to deliver her half share of her husband defendant No.5 in the suit schedule properties. Per contra, it is contention of the defendant No.6 that, the plaintiff intentionally has not included the other properties belongs to joint family of plaintiff and defendants i.e., bearing Sy.No.39/3, 52/11, 52/18, 54/3, 54/2 and out of them Sy.No.54/3, 54/2 have been sold by the defendant No.1 to 5 colluding with each other to the defendant No.3 husband Rajesh and said properties have not been included in this suit. In support of her contention defendant No.6 herself examined as D.W.1 and got marked

Ex.D.1 to 15 documents in her favour. The learned counsel for the defendant has cross examined the P.W.1, in her cross examination P.W.1 has deposed that, “ದಾವಾ ಸ್ವತ್ತುಗಳನ್ನು ಹೊರತುಪಡಿಸಿ ನಮ್ಮ ಕುಟುಂಬಕ್ಕೆ ಇನ್ನೂ 5 ಸ್ವತ್ತುಗಳು ಇವೆ ಎದರೆ ಸರಿಯಲ್ಲ. ಅವುಗಳೆಂದರೆ ಸರ್ವೆ ನಂ.52/18, 52/11, 39/3, 54/3, 54/2 ಇಷ್ಟೂ ಸ್ವತ್ತುಗಳು ನಮ್ಮ ಕುಟುಂಬಕ್ಕೆ ಸೇರಿದ ಸ್ವತ್ತುಗಳು ಎಂದರೆ ಸರಿ. ಸಾಕ್ಷಿಯು ಮುಂದುವರೆದು ಸದರಿ ಸ್ವತ್ತುಗಳು ನನ್ನ ತಂದೆ ಈಗಾಗಲೇ ಮಾರಾಟ ಮಾಡಿದ್ದು, ಕ್ರಯಕ್ಕೆ ಪಡೆದಿರುವವರು ನೊಂದಣಿ ಮಾಡಿಸಿಕೊಂಡಿಲ್ಲ ಎಂದು ನುಡಿಯುತ್ತಾರೆ. ಸದರಿ ಮಾರಾಟ ಮಾಡಿರುವ ವಿಷಯವನ್ನು ನನ್ನ ದಾವೆಯಲ್ಲಿ ಹೇಳಿಲ್ಲ. ನನ್ನ ಸಾಕ್ಷಿ ವಿಚಾರಣೆಯ ಪ್ರಮಾಣ ಪತ್ರದಲ್ಲಿ ಹೇಳಿಲ್ಲ. ಹೇಳಲು ತೊಂದರೆ ಇಲ್ಲ”. Further admitted that, “ಅವ್ವೇರಹಳ್ಳಿ ಚಂದ್ರೇಗೌಡ ಗೊತ್ತು. ನಮ್ಮ ಕುಟುಂಬದ ಸ್ವತ್ತುಗಳು ಅವ್ವೇರಹಳ್ಳಿ ಚಂದ್ರೇಗೌಡ ರವರ ಹೆಸರಿನಲ್ಲಿ ಇವೆ ಎಂದರೆ ಸಾಕ್ಷಿಯ ನನ್ನ ತಾತನ ಅವಧಿಯಲ್ಲಿ ಮಾರಾಟ ಮಾಡಿದ್ದಾರೆ ಎಂದು ನುಡಿಯುತ್ತಾರೆ.” But, plaintiff has not made the party to the suit one Chandregowda of Avverahalli Village, either the defendant No.6 has not made any attempt to implead the Chandregowda as necessary party to this suit. Because, it was suggest by the defendant that, one property of joint family is standing in the name of Chandregowda for which either the plaintiff or defendant have not produced any single document to show that, one of the joint family property is standing in the

name of Chandregowda. Hence, the contention of defendant No.6 cannot be accepted unless until proved by the cogent and sufficient material evidence before this court.

11. And further it was suggested to the P.W.1 that, the defendant No.6 had filed O.S.No.793/2013, on behalf of minor against defendant No.1 and 5 herein, for which P.W.1 pleaded her ignorance and also pleaded her ignorance to the suggestions that FDP No.3/2015 is pending. But, further she has admitted that, she has filed her objection, but she do not know its contents of said objection and further it was suggest to the P.W.1 that, herself and defendant No.2 to 4 have consented to 6th defendant to have the share of his children, for which also P.W.1 has pleads her ignorance and further she has admitted that, “ನನ್ನ ತಾಯಿಯ ಹೆಸರು ಶಂಬಮ್ಮ. ಸದರಿ ಶಂಬಮ್ಮ ಈ ದಾವೆಯಲ್ಲಿ ಪಕ್ಷಗಾರರನ್ನಾಗಿ ಮಾಡಿಲ್ಲ. ನನ್ನ ತಂದೆ ತೀರಿಕೊಂಡ ನಂತರ ಖಾತೆ ಮಾಡಬೇಕೆಂದು ಕಂದಾಯ ಇಲಾಖೆಗೆ ದಾವಾ ಸ್ವತ್ತುಗಳಿಗೆ ಸಂಬಂಧಿಸಿದಂತೆ ಅರ್ಜಿ ನೀಡಿದ್ದೇನೆ ಎಂದರೆ ಸರಿ”. And further the learned counsel for the defendant has suggested that, herself has relinquished right of her share in the suit schedule properties for which P.W.1 denied.

12. In support of her contention defendant No.6 has produced the Ex.D.1 is the Certified copy of the RTC extract in respect of Sy.No.54/3 measuring 22 guntas and also produced Ex.D.3 is the RTC extract for the year dated 2017-2018 in Sy.No.54/3. Further produced Ex.D.4 in respect of Sy.No.54/2 measuring 18 guntas. On looking into the Ex.D.3 and 4 it discloses that, the Sy.No.54/3, 54/2 has been changed in the name of R. Rajesh S/o Revanna Siddaiah, on the basis of Sale Deed dated 27-02-2012, in support of the Ex.D.3 and 4 defendant has produced Ex.D.10 is the Certified copy of Sale Deed dated 27-02-2012. On looking into the document recitals in the Ex.D.10, it discloses that, the defendant No.1 and defendant No.5 have executed the Ex.D.10 in favour of defendant No.3 husband for the purpose of family legal necessities and also discharge the loan obtained by their family. But, it is specific contention of the defendant No.6 that, the said properties have not been included in the suit schedule properties.

13. Even after I.A.No.5 allowed and amended written statement has filed either the plaintiff and defendant No.6 have not taken any proper steps to implead the said R. Rajesh S/o

Revanna Siddaiah in this suit as necessary parties. There is no any hurdle to defendant No.6 to include Sy.No.54/3 and 54/2 and also implead the R. Rajesh S/o Revanna Siddaiah necessary parties as it is a suit for partition either the parties having standing in the same foot. On looking into the conduct of both parties, it discloses that, either parties are not interested to included the above said Rajesha and also above properties in the suit.

14. Further defendant has produced the Ex.D.11 is the Certified copy of the Mutation Register No. H3/2012-13, it has been changed from the name of Mastigowda @ Gundaiah S/o Mastigowda @ Gowdaiah in respect of Sy.No.51/4 and 52/18 have been changed in the name of H.D. Mastigowda S/o Doddegowda. But with regard to the name of Mastigowda @ Gundaiah S/o Mastigowda @ Gowdaiah is concerned either the plaintiff or the defendant No.6 have not given any explanation as to the name mentioned in the plaint. Defendant No.1 have is Mastigowda S/o Late Kullegowda and documents produced by the plaintiff and defendants are discloses that, defendant No.1 name is Mastigowda @ Gundaiah S/o Mastigowda @ Gowdaiah. But,

Ex.D.10 Sale deed clearly discloses that, the defendant No.1 name is Mastigowda @ Gundaiah S/o Mastigowda @ Gowdaiah, but as per Ex.D.11 either the plaintiff or the defendants have not taken any steps to implead the above said H.D. Mastigowda S/o Doddegowda in respect of Sy.No.51/4 and 52/18 and also properties.

15. Further it is case of the defendant No.6 that, her children had filed O.S.No.793/2013 on the file of 2nd Addl. Civil Judge and JMFC, Channarayapatna for the relief of 1/6th share marked at Ex.D.14 is the Certified copy of the Judgment and Decree it discloses that, in the said suit the learned 2nd Addl. Civil Judge and JMFC, Channarayapatna has declared that, defendant No.6 children are entitle to 1/6th share in the property mentioned in decree in O.S.No.793/2013. As per contention of the defendant No.6, plaintiff has relinquished her right in favour of defendant No.1 and 5 by executing relinquishment deed. In support of the same, defendant has deposed in her chief examination that, accordingly, the FDP No.3/2015 is pending for the possession of the suit schedule properties. In support of her oral testimony, the defendant has not produced any document to show that, the

plaintiff has relinquished her share in favour of defendant No.1 and 5 in Final Decree Proceedings in FDP No.3/2015. Hence. the contention of the defendant. cannot be accepted without corroborated by the cogent and convincing evidence. Further defendant has produced Ex.D.14 is the Certified copy of the Judgement and Decree wherein, the plaintiff herein was not party to the O.S.No.793/2013, even though defendant No.1 has consented to divide the suit schedule properties in two shares, as per the contention of the defendant No.6, the question arised before this court that, Whether the defendant No.1 having any right to consented to divide the suit schedule properties only in two shares with excluding other children of defendant No.1? But, as per Sec.6 of Hindu Succession Act , children of defendant No.1 are entitle to equal share. But, had he any absolute interest to consented to divide the suit schedule properties in two shares, No because, plaintiff and other defendants are coparcerner and joint family members.

16. Further plaintiff has produced the Ex.P.1 is the RTC extract, in respect of Item No.1 of the suit schedule property. On looking into the Ex.P.1 it discloses that, the suit schedule

properties item No.1 has been changed in the name of defendant No.1 on the basis of M.R.No.41/82-83 as per partition.

17. Plaintiff has produced Ex.P.2 is the RTC extract, in respect of item No.2 of the suit schedule property. But, on looking into the Ex.P.2 it discloses that, Sy.No.14 total extent of 1 Acre 36 guntas have been standing in the name of Boramma W/o Boregowda, Chikkegowda @ Annaiah S/o Doddegowda, Jayamma W/o Ningegowda, H.G. Mahesh S/o Gangadharagowda. But, the above said persons are not parties in this suit and also there is no any manifestation(ಪರಾಪು) and material to show that, the suit schedule properties are belongs to plaintiff and defendants family. Hence, the said item No.2 cannot be considered as a joint family property of plaintiff and defendant No.1 to 6.

18. Further plaintiff has produced Ex.P.3 is the RTC extract in respect of item No.3 of the suit schedule property which is standing in the name of defendant No.1 Mastigowda. Ex.P.4 is the RTC extract which is also standing in the name of defendant No.1 and in respect of item No.4 of the suit schedule property.

19. Ex.P.5 is the RTC extract in respect of item No.5 of the suit schedule property, on looking into the measurement is

concerned there is no dispute that, the suit schedule property item No.5 measuring 12½ guntas, but which is standing in the joint name of Madegowda S/o Mastigowda @ Gowdaiah and Manjegowda S/o Madegowda, above said Manjegowda and Madegowda has not been made as a parties, either the plaintiff, or defendant has not given any explanation for the entries to the name of Madegowda and Manjegowda in Ex.P.5 Hence, the plaintiff has not produced any single document to show that, the suit schedule property item No.5 belongs to plaintiff and defendants family.

20. Ex.P.6 is the RTC extract in respect of item no.6 of the suit schedule property, which is standing in the name of defendant No.1 on the basis of M.R.No.9/84-85 as per partition. Ex.P.7 is the RTC extract in respect of item No.7 of the suit schedule property, which is also standing in the name of defendant No.1 as per M.R.No.41/82-83 as per partition. Ex.P.8 is the RTC extract in respect of item No.8 of the suit schedule property. But, as per the measurement mentioned in the plaint is 9 guntas, but as per Ex.P.8 is concerned in the name of defendant No.1 measuring 7½ guntas is standing and it would

not tally each other and different extent found in the item No.8 of the suit schedule property, more than the extent mentioned in the Ex.P.8, for which also either plaintiff or the defendant has not given explanation. Hence this court has restricted the claim of the plaintiff in respect of item No.8 of the suit schedule property only to the extent of 7½ guntas as per Ex.P.1. Ex.P.9 is the Tax Assessment Register in respect of the suit schedule property item No.9, which discloses that, the said property is standing in the name of defendant No.1 Mastigowda @ Gundaiah. On the other hand, the defendant has not disputed the nature of the properties as to suit schedule properties are ancestral and joint family properties of plaintiff and defendants. Accordingly, this court has come to the conclusion that, plaintiff and defendants are the joint family members and properties item No.1, 3, 4, 6 to 9 are the ancestral and joint family properties of plaintiff and defendants No.1 to 6. Hence, **ISSUE NO.1 AND 2** are answered in **PARTLY AFFIRMATIVE.**

21. **ISSUE NO.3:** As discussed in the above issues, it is burden lies on the defendant No.6 to prove that, the plaintiff has relinquished right her share in favour of defendant No.1 and 5,

for which the defendant has not produced any single document to show that, the plaintiff has relinquished her right in favour of defendant No.1 and 5, except giving oral evidence, no material and cogent evidence is produced by the defendant No.6 to establish that, the plaintiff has relinquished right of her share to defendant No.1 and 5. Hence, **ISSUE NO.3** is answered in the **NEGATIVE**.

22. **ISSUE NO.4 AND 5**:- These two issues are inter-linked to each other are taken for common discussion to avoid the repetition of facts.

23. As discussed in the above paras, the plaintiff has established that, suit schedule property item No.1, 3, 4 and 6 to 9 are the ancestral and joint family properties of plaintiff and defendants wherein as per Sec.6 of Hindu Succession Act, plaintiff and defendant No.1 to 5 are the coparcener and joint family members and entitle for equal share in the suit schedule properties. Accordingly, plaintiff is entitle to 1/6th share in the suit schedule properties. Accordingly, **ISSUE NO.4 AND 5** are answered in the **AFFIRMATIVE**.

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

-:: ORDER ::-

***Suit of the plaintiff is
Partly Decreed with cost.***

***Plaintiff and defendant
No.1 to 5 are entitle to equal
share in the suit schedule
properties item No.1, 3, 4 and
6 to 9 and suit in respect of
item No.2 and 5 are concerned
hereby dismissed for lack of
material evidence.***

***Draw Preliminary decree
accordingly.***

*(Dictated to the stenographer and typed by her and then
corrected by me, then judgment is pronounced in open court
on 25th day of April 2019)*

(S. Chinnaswamy)

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

:-: ANNEXURE :-:

1. List of witnesses examined for plaintiffs:-

PW-1 : Manjula

2. List of documents marked for plaintiffs:-

Ex.P-1 to 8 : RTC extract

Ex.P.9 : Katha Extract

3. List of witnesses examined for Defendants : -

DW-1 : Jyothi

4. List of documents marked for Defendants : -

Ex.D-1 to 9 : RTC extracts

Ex.D-10 : Certified copy of Sale deed dt. 27-02-2012

Ex.D-11 : Mutation Register

Ex.D-12 : Encumbrance Certificate

Ex.D-13 : Certified copy of Order sheets in
O.S. No.793/2013

Ex.D-14 : Certified copy of Judgment and Decree in
O.S.No.793/2013

Ex.D-15 : RRT No.278/17-18 Notice

(S. Chinnaswamy)

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