

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

-:: PRESENT ::-

Sri. S. Chinnaswamy

B.A., LL.B.

**Prl. Civil Judge & J.M.F.C.,
Channarayapatna.**

Dated 16th day of January 2020

O.S. No.257/2019

Plaintiff/s : Ramesh S/o Late Nanjegowda @ Gowdaiah
Aged about 58 years,
R/at Yalenahalli Village,
Hirisave Hobli,
Channarayapatna Taluk,
Hassan District.

(By Sri. S.S.P., Advocate)

-V/s-

Defendant/s : 1. Gangamma,
W/o Late Nanjegowda @ Gowdaiah,
Aged about 65 years,

2. Y.N. Lakshmamma
D/o Late Nanjegowda @ Gowdaiah,
Aged about 56 years,

3. Y.N. Mogannagowda,
S/o Late Nanjegowda @ Gowdaiah,
Aged about 54 years,

4. Y.N. Papegowda,
S/o Late Nanjegowda @ Gowdaiah,
Aged about 52 years,
5. Y.N. Bojegowda,
D/o Late Nanjegowda @ Gowdaiah,
Aged about 50 years,

6.Y.N. Komala,
D/o Late Nanjegowda @ Gowdaiah,
Aged about 40 years,

7. Y.N. Basavaraju
D/o Late Nanjegowda @ Gowdaiah,
Aged about 37 years,

All are R/o at Yalenahalli Village,
Hirisave Hobli,
Channarayapatna Taluk.

(Exparte)

Date of institution of suit	:	28-05-2019		
Nature of the suit	:	Partition and Separate possession suit		
Date of recording evidence	:	25.09.2019.		
Date of pronouncement of Judgment	:	16.01.2020		
Total duration	:	<u>Years</u> 00	<u>Months</u> 07	<u>Days</u> 18

(S. Chinnaswamy)
Prl. 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 one propositors Nanjegowda @ Gowdaiah having two wives 1st wife is Honamma, she is no more through the 1st wife the plaintiff and defendant No.2 to 5 had born and through the 2nd wife Gangamma defendant No.6 and 7 had been born. The said Nanjegowda @ Gowdaiah is no more, the 2nd wife is the defendant No.1. Such being the case, the plaintiff had been left to the house about 20 years back and he is working at Bengaluru and the defendant No.7 had filed OS.No.121/2008 against his father Nanjegowda @ Gowdaiah and defendant no.2 to 6. In respect of suit schedule properties of plaintiff and defendant joint family. And said suit was ended in compromise and in that suit the plaintiff was not made as a party and at the time of entering into the compromise petition, it was agreed to give the share of the plaintiff. When he had come to village.

3. In this regard, compromise has been entered and such being the case the Nanjegowda @ Gowdaiah who is father of plaintiff died on 15.09.2014. As per the compromise entered in the OS.no.121/2008. After death of Nanjegowda @ Gowdaiah, the property fallen to the share of father of plaintiff shall be divided between plaintiff and defendants. But, the defendant no.1, after death of Nanjegowda @ Gowdaiah, she has changed the katha of the suit schedule properties into her name. And plaintiff has come to the village 2 years back, at that time, he came to know that, the compromise has been entered in the court. Accordingly, 'A' schedule property was fallen to the share of the plaintiff's father Nanjegowda @ Gowdaiah and it came to know that, the above said properties have been changed in the name of defendant no.1. On the basis of Pauthi Varasu. When the plaintiff has demanded his share in the suit schedule property. But, the defendants have refused to allot the share of the plaintiff. And further the suit schedule property Item no.B1 was granted to father of the plaintiff by name Nanjegowda @ Gowdaiah on behalf of joint family and the said property katha also has been changed in

the name of defendant no.1. The defendant No.1 by colluding with the revenue officials has changed the katha of the suit schedule 'B' Item no.1 property into her name and further 'B' schedule Item no.2 property was fallen to the share of the plaintiff's father Nanjegowda @ Gowdaiah as per decree in OS.no.121/2008 and the said properties also have been changed in the name of defendant no.1, wherein the plaintiff having 1/7th share in the suit schedule 'B' property Item no. 2. In this regard, the plaintiff has conveyed the panchayath, but the defendants have refused to allot the share of the plaintiff. Hence, filed this suit for the relief of partition and separate possession and pray for decree the suit.

4. On the other hand, the defendants have not appeared before this court even after service of summons.

5. In order to prove the case of the plaintiff, the plaintiff herself examined as P.W.1 and got marked Ex.P.1 to 12 documents in his favour.

6. Heard learned counsel for the plaintiff and examined the materials placed on records.

7. The following points are arise for my consideration.

-:: POINTS ::-

1. Whether the plaintiff proves that, suit schedule properties are the joint family properties of plaintiff and defendants and suit schedule Item No.1 'A' property were fallen to the share of plaintiff in a partition taken place in OS.No.121/2008?
 2. Whether the plaintiff proves that, the defendant no.1 has illegally colluding with revenue officials has changed the katha of the suit schedule properties in her favour ?
 3. Whether the defendant proves that, the suit schedule Item no. 'B' property, plaintiff is entitled for 1/7th share in the suit schedule properties?
 4. Whether the plaintiff is entitled for the relief as sought for?
 5. What order?
8. My answers to the above points are as under:-

Point No.1-	In the Affirmative
Point No.2-	In the Affirmative
Point No.3-	In the Partly Affirmative
Point No.4-	In the Partly Affirmative
Point No. -	As per final order for the following :-

-:: REASONS ::-

9. **POINT NO.1:-** That in order to prove the above points, plaintiff himself examined as PW.1 and got marked Ex.P.1 to 12

documents in his favour. And he has reiterated the plaint averments in his chief examination.

10. It is specific case of the plaintiff that, the defendant no.1 is the 2nd wife of Nanjegowda @ Gowdaiah, who is father of plaintiff and plaintiff and defendant No.2 to 5 are the children of 1st wife Honamma and defendant No.6 and 7 are the children of defendant no.1 who is 2nd wife of Nanjegowda @ Gowdaiah. There is no dispute with regard to the relationship between plaintiff and defendants. Moreover, the defendants have not come forward to file their written statement and placed exparte.

11. That in order to prove the relationship between plaintiff and defendants, plaintiff has produced Ex.P.10 is the Certified copy of the plaint in OS.No.121/2008 on the file of Civil Judge and JMFC, Channarayapatna. On looking into the plaint averments it discloses that, the one Nanjegowda has 7 children they are plaintiff and defendant No.2 to 7. further plaintiff has produced certified copy of the Compromise petition in O.S.No.,121/2008 on the file of Civil Judge (Jn.Div.), Channarayapatna on dated 19-04-2008. On

looking into the Ex.P.10 is the plaint it discloses that, the one Nanjegowda had 7 children they are plaintiff and defendant No.2 to 7 and further plaintiff has produced the Certified copy of the compromise petition in O.S.No.121/2008 on the file of Civil Judge, Channarayapatna on dated 19-04-2008. On looking into the compromise petition Ex.P.11 and copy of the plaint Ex.P.10 it discloses that, one of the son Nanjegowda @ Gowdaiah by name Y.N. Basavaraj had filed O.S.No.121/2008 and same is ended in compromise as per Ex.P.11 further on looking into the Ex.p.11 is the compromise petition filed in O.S.No.121/2008, it discloses that, the schedule mentioned in O.S.No.121/2008 wherein in para 4 of the compromise petition it was stated that, the one Y.N. Ramesh S/o Nanjegowda @ Gowdaiah had been left the house and he had also having share in the Sy.No.5/10 measuring 17 guntas and in Sy.No.35/4B towards northern side measuring 13 guntas and his share shall be enjoyed by the 1st defendant untill he came back to the village. Accordingly, as per the case of the plaintiff the suit schedule property A' schedule mentioned in the suit Sy.No.5/10 measuring 17 guntas and in Sy.No.35/4B2 measuring

13 guntas were fallen into the share of plaintiff in the compromise decree in O.S.No.121/2008. Further it discloses that, those properties were to be enjoyed by defendant No.1 husband who is father of the plaintiff by name Nanjegowda @ Gowdaiah.

12. Further it is specific case of the plaintiff that, after death of plaintiff father Nanjegowda @ Gowdaiah, defendant No.1 has changed the katha of the 'A' schedule properties Item No.1 and 2 into her name. In support of his contention plaintiff has produced Ex.P.1 and 2 are the RTC extract, On looking into the Ex.P.1 and 2 RTC extract in respect of 'A' schedule property Item No.1 and 2 it discloses that, as per the MRH No.18/2014-15 has been changed in the name of defendant No.1 Gangamma on the basis of Pouthy varasu. As per the documents produced by the plaintiff i.e., Ex.P.11 is the Decree passed in O.S.No.121/2008, it discloses that, the 'A' schedule properties are fallen to the share of the plaintiff Ramesh. Since, the plaintiff was not residing in the village it was agreed to enjoyed by the plaintiff father Nanjegowda, but, after death of Nanjegowda defendant No.1 has changed the katha of the suit

schedule property without the knowledge of plaintiff. Accordingly, the plaintiff is entitle to property whichever enjoyed by his father during his absence is belongs to plaintiff. Accordingly, the plaintiff has established that, defendant No.1 colluding with the revenue officials has changed the katha of the 'A' schedule properties. Accordingly, **POINT NO.1 AND 2** are answered in the **AFFIRMATIVE.**

13. **POINT NO.3:-** As per the case of the plaintiff that, the 'B' schedule Item No.1 property was granted to plaintiff father, on behalf of the joint family in favour of plaintiff father, wherein he has 1/7th share in the 'B' schedule property Item No.1. In support of his contention, plaintiff has produced Ex.P.3 is the RTC extract, on looking into the Ex.P.3 it discloses that, the Sy.No.25/P8 is standing in the name of defendant No.1 as per M.R.No.36/2000-01 and further plaintiff has not produced any single document to show that, 'B' schedule property Item No.1 was granted to his father Nanjegowda. In the absence of such Grant Certificate, the court cannot come to the conclusion that, the 'B' schedule property Item No.1 has been granted to his father on behalf of the joint family.

Accordingly, the plaintiff has utterly failed to prove that, 'B' schedule property Item No.1 was granted to his father. When the plaintiff has failed to prove the said property was granted to his father is not entitle for the share in the 'B' schedule property Item No.1.

14. Further it is case of the plaintiff that, the 'B' schedule property Item No.2 Sy.No.16/12 measuring 29 guntas was fallen to the share of his father as per Decree in O.S.No.121/2008. In support of his contention, plaintiff has produced the Ex.P.11 and 12 are the Compromise Petition and decree in O.S.No.121/2008. On looking into the Ex.P.11 it discloses that, the suit 'B' schedule property Item No.2 was fallen to the share of plaintiff as per column No.1 mentioned in the Compromise Petition the Sy.No.16/12 measuring 29 guntas and Grama Tana property situated at Yalenahalli village 18 X 18 feet Managlore Tiled house was belongs to share of plaintiff father Nanjegowda. On looking into the Ex.P.12 it clearly discloses that, the suit 'B' schedule property Item No.2 was fallen to share of plaintiff father

Nanjgowda, during his life time said Nanjegowda has not disposed of his properties in any manner died intestate. In such circumstances, the legal heirs of said Nanjegowda are equally entitle to 1/7th share in the 'B' schedule Item No.2 of the suit schedule property. Accordingly, **POINT NO.3 and 4** are answered in the **PARTLY AFFIRMATIVE**.

15. **POINT NO.4:-** For above discussion this court proceed to pass the following;

-:: ORDER ::-

*The suit of the plaintiff is
Partly Decreed with cost.*

*Further it is declared that, the
plaintiff is the owner of the 'A' suit
schedule properties Item No.1 and 2.*

*And further declared that,
plaintiff is entitled to 1/7th share in
the 'B' schedule Item No.4 and in
respect of 'B' schedule Item No.3 is
concerned suit is dismissed.*

No order as to cost.

*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 16th day of
January 2020)*

(S. Chinnaswamy)
Prl. Civil Judge & J.M.F.C.,
Channarayapatna.

-:: ANNEXURE ::-

1. List of witnesses examined for plaintiff :-

PW-1 : Ramesh

2. List of documents marked for plaintiff :-

Ex.P-1 to 7 : RTC extract

Ex.P-8 & 9 : Mutation Register

Ex.P-10 : Certified copy of the plaint copy in
O.S.No.121/2008

Ex.P-11 : Certified copy of the compromise petition in
O.S.No.121/2008

Ex.P-12 : Certified copy of the Decree in
O.S.No.121/2008

3. List of witnesses examined for Defendants : -

-NIL-

4. List of documents marked for Defendants : -

-NIL-

(S. Chinnaswamy)
Prl. Civil Judge & J.M.F.C.,
Channarayapatna.