

**IN THE COURT OF CIVIL JUDGE AND JMFC
AT HOLENARASIPURA**

Present:- **Sri. R.Mahesha, B.A.L., L.L.B,**
Civil Judge and J.M.F.C,
Holenarasipura.

Dated this the 19th day of October, 2019

O.S.No.163/2012

Plaintiff / s : Yogegowda A.C
S/o Late Chaluvegowda,
Aged about 45 years,
Algowdanahalli village,
Hallymysore Hobli,
Holenarasipura Taluk,
Hassan District.

(By Sri.H.S.A., Adv.)

V/s

Defendants: 1. A.C.Ramachandra
S/o Late Chaluvegowda,
Aged about 62 years,
Retired Government Employee,
2. A.C.Krishnegowda
S/o Late Chaluvegowda,
Aged 50 years,
Both are residing at
Algowdanahalli village,

Hallymysore Hobli,

Holenarasipur Taluk

(D1 By Sri.J.U.R., Adv.,

D2 By.Sri.R.P., Adv.,)

Date of filing of suit : 01/03/2012

Nature of Suit : Permanent Injunction.

Date of Commencement
Of recording evidence : 31/10/2014

Date of Judgement : 19/10/2019

Total Duration : Year/s Month/s Day/s
07 07 18

J U D G E M E N T

The present suit filed for permanent injunction against the defendant.

2. **The brief facts of the plaintiff's case are as under:**

It is specifically averred in the plaint that the suit schedule properties originally belongs to one Chaluvegowda who is the father of plaintiff and defendants. The said Chaluvegowda is no more. He died 4-5 years back. The plaintiff and defendants have live jointly since 30 years back and enjoyment of the suit properties jointly. The defendant No.1 is public servant,

he served as 'D' group employee in Devaramuddanahalli village. Now he is retired from service due to the reason of the defendant No.1 in government job. He was separated from joint family and started to cultivate land which was allotted to defendant No.1 and residing separately. But he did not make any document. The plaintiff having faith, confidence over the defendants because both have elder brothers to plaintiff. Plaintiff and defendant No.2 have live jointly, his father Chaluvegowda also lived with two sons i.e. plaintiff and defendant No.2. Due to misunderstanding arose between plaintiff and defendant No.2, they finally partitioned the suit properties in the presence of panchayathdars on 05/04/1979. Both have agreed to take equal share in Mangalore tiled House, which was built by plaintiff and defendant No.2. After defendant No.1 separately from joint family but defendant No.2 not gave half share in Mangalore tiled house and all suit properties orally partitioned between the plaintiff and defendant No.2. Then it was reduced in writing. In the presence of village, elder and family well wisers. The said paluparikath was kept in the custody of defendant No.2. The plaintiff had faith, trust over the defendant No.2. Hence, he could not ask for hand over the original paluparikath. Afterwards the plaintiff and defendant No.2 started to live separately and enjoying properties as per paluparikath dated 05/4/1979. The

plaintiff has been in peaceful possession and enjoyment since 33 years by growing crops and also paying tax regularly. Such being the facts, the original paluparikath was in the custody of Krishnegowda, he over written old Sy.No.107, new Sy.No.95 which was allotted to plaintiff share of 2 acre. But the defendant No.2 himself amend the paluparikath 2 acre and the Sy.No.4 also extent change as 2 guntas instead of 3 guntas. Plaintiff came to know about amendment of extent 3-4 months back. Plaintiff raised his objection defendant No.2 says go to court and get back your share. It is further stated that he is in possession and enjoyment and actual cultivation of lands, which are coming to his share. Then he verifying revenue records, it shows that defendant No.2 himself changed the survey number as in Sy.No.95 and extent 1 acre instead of 2 acre. The defendant No.2 extent 1 acre changed as 2 acres in Sy.No.4, 3 guntas allotted to plaintiff, it was also changed and 2 guntas instead of 3 guntas. House property also not gave his actual share as acquired by panchayadars. He just gave chattel house but house property not equally partitioned between the plaintiff and defendants. The plaintiff issued legal notice to defendant by calling effect equal partition on 12/03/2012. The defendant No.2 gave false reply on 17/04/2012. The defendant No.2 and sons have no any manner of right, title and interest over the suit property

caused obstruction over suit property. Hence the plaintiff constrained to file this suit.

3. After issuance of summons, defendants appeared before the court through their counsel and filed their written statement.

The brief facts of written statement of defendnt No.1 and 2 is as follows:

In the written statement, defendants denying the case made by the plaintiff. he has further contended that the suit is vexatious, frivolous, and totally false which is filed with an intention to gain causing wrongfully loss to them. The relation is admitted as correct. But the defendant No.2 specifically contended that during the lifetime of Chaluvegowda on 05/04/1979 plaintiff and defendants partitioned the joint family properties. They are started to live separately by enjoying properties as per paluparikath. Revenue records changed in their name. The suit item No.9 and 10 properties are also partitioned in the year 1990. Such being the fact there is no meaning in stating there is partition, panchayath paluparikath was over writing/amended by the defendant No.2. Due to old aged to defendant No.2, he gave his properties to his sons as per the partition and defendant No.2 children have in actual possession and enjoyment and cultivation of properties which are allotted by the defendant No.2.

Due to ill will and motive, the present suit filed for the reasons that defendant No.2 has improved land, it is not tenable by the plaintiff. There is no cause of action arose to file the present suit. The cause of action stated in the suit is false, concocted and fabricated. For the purpose of this suit plaintiff is not entitled to get any relief as sought in the plaint. Hence prays for dismissal of suit with exploratory cost.

4. On the basis of the above pleadings, my predecessor has been framed the following issues:

1. Whether the plaintiff proves that there was a partition of the suit schedule properties between the plaintiff and the defendants?
2. Whether the plaintiff proves that he is in possession and enjoyment of the suit schedule properties?
3. Whether the plaintiff proves that the defendants are interfering with his possession over the suit schedule properties?
4. Whether the plaintiff proves that he is entitled for the suit relief?
5. To what order or decree?

5. In order to prove the case, the plaintiff examined as P.W.1. Ex.P1 to P12 got marked. In support of his case, he examined one witness by name A.Channegowda as PW.2. On the other hand, the defendant No.2 himself examined as DW.1 and produced Ex.D1 to 8.

6. The plaintiff counsel filed written argument. Perused. Heard arguments from defendant side. Perused the record.

Ex.P1- Computerized RTC, it disclose that bearing Sy.No.4 total guntas, 1 guntas each stands in the name of plaintiff, defendant No.2 in column 9 and 12 of RTC vide M.R.No.32/1988-89 in the year 2011-12.

Ex.P2: Computerized RTC, it disclose that bearing Sy.No.15, plaintiff and defendants name appears in column 9 and 12 of RTC vide M.R.No.32/1988-89 in the year 2011-12.

Ex.P3: Computerized RTC, it disclose that bearing Sy.No.18, plaintiff and defendants name appears in column 9 and 12 of RTC vide M.R.No.32/1988-89 in the year 2011-12.vide M.R.No.32/1988-89

Ex.P4: Computerized RTC, it disclose that bearing Sy.No.28, plaintiff and defendants name appears in column 9 and 12 of RTC vide M.R.No.32/1988-89 in the year 2011-12.

Ex.P5: Computerized RTC, it disclose that bearing Sy.No.21, plaintiff to an extent of 33 guntas and defendant No.2 to an extent of 39 guntas name appears in column 9 and 12 of RTC vide M.R.No.32/1988-89.

Ex.P6: Computerized RTC, it disclose that bearing Sy.No.107/2, plaintiff name appears to an extent of 1 acre in column 9 and 12 of RTC vide M.R.No.2/1988-89 on the basis of dursth.

Ex.P7: Computerized RTC, it disclose that bearing Sy.No.107/3, A.K.Puttaraju S/o Krishnegowda name appears to an extent of 1 acre in column 9 and 12 of RTC vide M.R.No.5/2009-10 on the basis of partition.

Ex.P8: Computerized RTC, it disclose that bearing Sy.No.107/1, defendant No.2 name appears to an extent of 1 acre in column 9 and 12 of RTC vide M.R.No.2/1988-89 on the basis of dursth.

Ex.P9: Legal notice, it disclose that the plaintiff issued legal notice to the defendant No.2.

Ex.P10: Postal receipts, it discloses that the plaintiff issued notice to defendants through RPAD.

Ex.P11: Postal acknowledgment, it discloses that the notice issued by the plaintiff duly served on the defendants.

Ex.P12: Reply notice: it disclose that the defendants gave reply to the notice issued by the plaintiff.

Defendants documents

Ex.D1: Old hand written RTC,

Ex.D2: Computerized RTC, it disclose that bearing Sy.No.107/3, A.K.Puttaraju S/o Krishnegowda name appears to an extent of 1 acre in column 9 and 12 of RTC in the year 2016-17 vide M.R.No.5/2009-10 on the basis of partition.

Ex.D3: Computerized RTC, it disclose that bearing Sy.No.107/4, A.K.Srikanth S/o Krishnegowda name appears to an extent of 1 acre in column 9 and 12 of RTC in the year 2016-17 vide M.R.No.5/2009-10 on the basis of partition.

Ex.D4: Mutation Extract, it disclose that bearing Sy.No.107, khatah has been accepted in favour of A.K.Puttaraju S/o Krishnegowda to an extent of 1 acre and after durast Sy.No.107 has been phoded and in Sy.No.107/1, 107/2 khatha has been accepted in favour of the plaintiff and defendant No.2 in respect of each 1 acre. Further in Sy.No.107/3 and 107/4 each 1 acre stands in the name of A.K.Puttaraja and A.K.Srikantha vide M.R.No.5/2009-10 as per partition.

Ex.D5: Mutation Extract, it disclose that, bearing Sy.No.4 08 guntas, in Sy.No.15 2 acre 23 guntas, in Sy.No.18/1 to an extent of 16 guntas, in Sy.No.21 3 guntas, in sy.No.28 to an extent of 1 acre 30 guntas, in Sy.No.95 to an extent of 4 acres, as per partition katha has been accepted in favour of plaintiff and defendant No.1 and 2.

Ex.D6: Akar Band, it disclose that bearing Sy.No.107 to an extent 4 acre stands in the name of defendant No.2.

Ex.D7 and 8, Index of land and record of rights.

7. The learned counsel for the plaintiff **Sri.H.S.A** filed written argument. In the written argument argued that the suit properties are the ancestral properties of father of plaintiff and defendants. The said Chaluvegowda died before 4-5 years back. They are

residing in jointly and they have been in joint possession and enjoyment of suit properties. The defendant No.1 is government employee, as he living separately before 25-26 years back and also allotted his shares. The plaintiff and defendant No.2 are continued in joint possession. Due to misunderstanding plaintiff and defendant No.2, they started living separately and partitioned the suit properties in the presence of panchayathdars on 05/04/1979. The mangalore tiled house fallen to share of plaintiff and defendant No.2 equally. After defendant No.1 separately from joint family but defendant No.2 not gave half share in Mangalore tiled house and all suit properties orally partitioned between the plaintiff and defendant No.2. The paluparikath was kept in the custody of defendant No.2. Afterwards the plaintiff and defendant No.2 started to live separately and enjoying properties as per paluparikath dated 05/4/1979. The plaintiff has been in peaceful possession and enjoyment since 33 years by growing crops and also paying tax regularly. Such being the facts, the original paluparikath was in the custody of Krishnegowda, he over written old Sy.No.107, new Sy.No.95 which was allotted to plaintiff share of 2 acre. But the defendant No.2 himself amid the paluparikath, 2 acre and the Sy.No.4 also extent change as 2 guntas instead of 3 guntas. Plaintiff came to know above said fact 3-4 months back. Plaintiff approached the

said fact with defendant No.2 and even though he refused to give his share. It is further argued that he is in possession and enjoyment of his share. Thereafter he verifying revenue records, he came to knowledge about the defendant No.2 himself changed the survey number as in Sy.No.95, mentioned the extent as 1 acre instead of 2 acre. Further defendant No.2 also changed extent 1 acre as 2 acres in Sy.No.4, 3 guntas allotted to plaintiff, it was also changed and 2 guntas instead of 3 guntas. House property also not gave his actual share as acquired by panchayadars. He just gave chattel house but house property not equally partitioned between the plaintiff and defendants. In this regard the plaintiff issued legal notice to defendant by calling effect equal partition on 12/03/2012. The defendant No.2 gave false reply on 17/04/2012. The defendant No.2 and sons have no any manner of right, title and interest over the suit property caused obstruction over suit property. The plaintiff himself examined as PW.1, and produced Ex.P1 to 12. Further argued that the plaintiff and defendants are admitted the partition took place on 05/04/1979. During cross examination of DW.1 clearly admitted the correction of extent as 2 acre instead of 1 acre. For the said correction there is no entry in shara. In Sy.No.4 to an extent of 3 gunts fallen to the share of plaintiff, he further deposed that as per partitin, 3 guntas falls but in

the RTC has been mentioned as 1 guntas each. Except both properties, other properties were partitioned fallen to the share of plaintiff and defendants as per palupatti. Therefore it clear from the admission made by the DW.1. The plaintiff having faith with the defendant No.2, palupatti kept in his custody and he make false entry and get illegal khatha in his favour.

In support of his argument he relied on decision reported in **2016(4) KCCR 3692 Karnataka High Court in between Haleshappa and another Vs.K.N.Basarajappa.**

The law laid down in the Hon'ble Apex court and facts and circumstances of the suit aptly applicable. Therefore the plaintiff prays to decree the suit.

8. The learned counsel for the defendant No.2 **Sri.R.P** argued that during the lifetime of Chaluvegowda, partition took place on 05/04/1979 between plaintiff and defendants in respect of joint family properties. Thereafter they started to live separately by enjoying their properties as per paluparikath and got changed the revenue records changed in their name as per paluparikath. The suit item No.9 and 10 properties are also partitioned in the year 1990. Due to old age of defendant No.2, he partitioned his share to his sons. As per the partition, defendant No.2 children have in actual

possession and enjoyment of the same. The plaintiff filed this suit only to harass the defendant No.2. There is no cause of action arose to file the present suit. The cause of action stated in the suit is false, concocted and fabricated. In support of his contention he himself examined as DW.1 and got marked Ex.D1 to D8. Hence he prays to dismiss the suit.

9. My answers to the above issues are as under:

Issue No.1 : In the Affirmative.
Issue No.2 : Partly in the Affirmative
Issue No.3 : Partly in the Affirmative
Issue No.4 : Partly in the Affirmative
Issue No.5 : As per the final order,
for the following:

REASONS

10. **Issue No.1 to 4:** All the issues are taken together for common discussion to avoid repetition of facts and evidence.

11. Before going into discuss about actual dispute between parties, it is worthful to mention admitted facts of the parties. There is no dispute regarding relationship partition take place between plaintiff and the defendants on 05/04/1997. Further there is no dispute regarding

suit 'A' schedule item No.2 to 9 has been allotted to plaintiff. The main dispute between parties is that suit 'A' schedule item no.1 old Sy.No.107 and new Sy.No.95 which is situated in Algowdanahalli village total extent of 4 acres. Out of such extent as per the paluparikath, 2 acre allotted to the plaintiff, 1 acre of property was allotted to the defendant No.2 remaining 1 acre allotted to the defendant No.1. Defendant No.2 change the khatha as per paluparikath. The plaintiff faith in the defendant No.1 and 2 because, they are elder brother of plaintiff. While making khatha the defendant No.2 altered the extent as 2 acre allotted to the defendant No.2 in Sy.No.95 and 1 acre allotted to the plaintiff in Sy.No.95. The plaintiff did not know the above alteration of extent. But he has been in possession and peaceful enjoyment of 2 acre of property in Sy.No.95. It is noticed to plaintiff, when defendant No.2 and his children's come up for measure the property by survey officials, then he came to know regarding alteration of extent and change of khatha from the defendant No.2 to his children's. Then he asking defendant No.2 regarding alteration of extent but he did not response properly. Therefore without any alternative relief the plaintiff rushed to the court.

12. On the other hand the defendant No.2 denied the alteration of extent in paluparikath. He specifically

contended that as per the paluparikath, 1 acre of property allotted to the plaintiff in new Sy.No.95 and old Sy.No.107. He takes care of his sister's daughter, therefore 1 acre of property allotted to defendant No.2. There is no alteration in paluparikath. As per panchayath paluparikath get katha in the names of all parties. All the parties are in physical possession and enjoyment of their respective shares. Due to old age, he gave his property of Sy.No.95 to an extent of 2 acre to his children's. Defendant No.2 and his children's by investing so much of money and developing the above property. Due to ill will the plaintiff filed this suit to grab the property of defendant No.2. The defendant No.2 specifically denied possession of plaintiff in Sy.No.95, extent of 2 acre.

13. In order to prove the plaintiff case, plaintiff examined as PW.1 and one of witness examined as PW.2 by name Channegowda S/o Puttegowda and got marked Ex.P1 to P12. On the other hand defendant No.2 examined as DW.1 got marked Ex.D1 to Ex.D8. For the proof of plaintiff case, plaintiff produced revenue documents. Either parties did not produced original copy of paluparikath dated 05/04/1979. Both have alleged that the original paluparikath was with defendant No.2 and plaintiff alleged that the original paluparikath

was with the possession of defendant No.2. Both parties have not taken any steps to produce original paluparikath. Both have adduced oral evidence. The document produced by the plaintiff Ex.P6 to P8 reveals that the 'A' schedule item no.1, RTC stands in the name of plaintiff for the extent of 1 acre, remaining extent of 1 acre stands in the name of defendant No.1. 1 acre of property stands in the name of defendant No.2 son i.e. A.K.Puttaraja S/o Krishnegowda and in Sy.No.107/4 extent of 1 acre stands in the name of A.K.Srikantha S/o Krishnegowda as per M.R.No.5/2009-10. The defendant No.2 partition of Sy.No.95 extent of 2 acre in favour of his children's but he did not partition other properties which were get by his father. Learned counsel for plaintiff cross examined DW.1. During course of cross examination, clearly admits that in page 3, 9th line he admitted on **05/04/1979 the three sons' of late Chaluvegowda partitioned and partition deed prepared. The original partition deed kept in the custody of plaintiff. Thereafter, 1st defendant started to reside separately. Plaintiff and defendant No.2 are continued to live jointly. Thereafter after 5 years, plaintiff and defendant No.2 separated and started living separately.** He admitted regarding **execution of partition deed and the attesting witness who are all sign to the partition deed, and by showing xerox copy**

of partition deed. DW.1 clearly admits that in page 4, in 13th line

ಸರ್ವೆ ನಂ.95ರಲ್ಲಿ 1 ಎಕರೆ ಎನ್ನುವುದನ್ನು 2 ಎಕರೆ ಎಂದು ಮಾಡಿದ್ದಾರೆ ಎಂದರೆ ಸಾಕ್ಷಿ ನಕಲು ವಿಭಾಗ ಪತ್ರವನ್ನು ನೋಡಿ ನನಗೆ ಸರಿಯಾಗಿ ಕಾಣುವುದಿಲ್ಲ ಎಂದು ಹೇಳಿರುತ್ತಾರೆ. ಸರ್ವೆ ನಂ.95ರಲ್ಲಿ 2 ಎಕರೆ ಎಂದು ಬರೆದಿರುವುದನ್ನು 1 ಎಕರೆ ಎಂದು ತಿದ್ದಿದೆ ಎಂದರೆ ಸರಿ. ಪತ್ರ ತಿದ್ದಿರುವ ಬಗ್ಗೆ ಷರಾ ಬರೆದಿಲ್ಲ, ಹಾಗೂ ನಮ್ಮ ಸಮಕ್ಷಮ ಬರವಣಿಗೆ ಮಾಡಿಲ್ಲ.

14. Further during cross examination DW.1 clearly admits that in page 6 from 1st line that

ವಾದಿಗೆ ವಿಭಾಗ ಪಟ್ಟಿಯಲ್ಲಿ ಸರ್ವೆ ನಂ.4ರಲ್ಲಿ ಹಿತ್ತಲ ಹೊಲದಲ್ಲಿ 3 ಗುಂಟೆ ಬಂದಿತ್ತು ಎಂದರೆ ಸಾಕ್ಷಿ ವಿಭಾಗ ಪಟ್ಟಿಯಲ್ಲಿ ತಲಾ 3 ಗುಂಟೆ ಬರೆದಿದ್ದು, ಪಹಣಿ ಬರೆಯುವಾಗ ತಲಾ 1 ಗುಂಟೆ ಬಂದಿತ್ತೆಂದು ಹೇಳಿರುತ್ತಾರೆ. ವಾದಿಗೆ ಸರ್ವೆ ನಂ.15ರಲ್ಲಿ 19 ಗುಂಟೆ ಬಂದಿದೆ ಎಂದರೆ ಸರಿ. ಸರ್ವೆ ನಂ.15ರಲ್ಲಿ ತೋಟದ ಜಮೀನು 1-1/2 ಗುಂಟೆ ವಾದಿಗೆ ಬಂದಿದೆ ಎಂದರೆ ಸರಿ. ಸರ್ವೆ ನಂ.15ರಲ್ಲಿ ಹುಲಿ ಮೇವಿನ ಹೊಲದಲ್ಲಿ 20 ಗುಂಟೆ ಆಸ್ತಿ ಬಂದಿದೆ ಎಂದರೆ ಸರಿ. ಸರ್ವೆ ನಂ.18/1ರಲ್ಲಿ 6 ಗುಂಟೆ ವಿಸ್ತೀರ್ಣ ವಾದಿಯ ಹೆಸರಿಗೆ ವಿಭಾಗ ಪಟ್ಟಿಯಲ್ಲಿ ಬಂದಿದೆ ಎಂದರೆ ಸರಿ, ಬಕರೆ ಹೊಲದಲ್ಲಿ ಸರ್ವೆ ನಂ.21ರಲ್ಲಿ 39 ಗುಂಟೆ ವಿಸ್ತೀರ್ಣ ವಾದಿಯ ಹೆಸರಿಗೆ ವಿಭಾಗ ಪಟ್ಟಿಯಲ್ಲಿ ಬಂದಿದೆ ಎಂದರೆ ಸರಿ. ಸರ್ವೆನಂ.28 ರೈಲು ಮಾರ್ಗದ ಹೊಲದಲ್ಲಿ 15 ಗುಂಟೆ ಜಮೀನು ವಾದಿಗೆ ವಿಭಾಗ ಪಟ್ಟಿಯಲ್ಲಿ ಬಂದಿದೆ ಎಂದರೆ ಸರಿ. ಈಗ ಮೇಲೆ ಹೇಳಿರುವ ಸರ್ವೆ ನಂಬರು ಮತ್ತು

ವಿಸ್ತೀರ್ಣಗಳು ವಾದಿಯ ಹೆಸರಿಗೆ ಬಂದಿರುವ ಕುರಿತಾಗಿ ನನ್ನದು ತಕರಾರು ಇಲ್ಲ ಎಂದರೆ ಸರಿ. ಸರ್ವೆ ನಂ.95 ಬಾರೆ ಹೊಲ ಈಗ ಹೊಸ ಸರ್ವೆ ನಂ.107 ಆಗಿದೆ ಎಂದರೆ ಸರಿ.

From above admission it is clear that partition had taken place on 05/04/1979 between plaintiff and defendants. But defendant No.2 denied 2 acre of land allotted to the plaintiff in Sy.No.95 and he contending that he get 2 acre of property in Sy.No.95.

15. Further during cross examination he admitted the suggestion put forth by plaintiff. In page 6, 15th line that

ಸರ್ವೆ ನಂ.95ನ್ನು ಹೊರತುಪಡಿಸಿ ಉಳಿದೆಲ್ಲಾ ಸರ್ವೆ ನಂಬರುಗಳ ಖಾತೆ ನನ್ನ ವಿಸ್ತೀರ್ಣಕ್ಕೆ ನನಗೆ ಬಂದಿದೆ ಎಂದರೆ ಸರಿ. ಸರ್ವೆ ನಂ.95ರಲ್ಲಿ 2 ಎಕರೆ ವಿಸ್ತೀರ್ಣವನ್ನು ನಾನು ನನ್ನ ಹೆಸರಿಗೆ ಖಾತೆ ಮಾಡಿಕೊಂಡಿದ್ದೇನೆ ಎಂದರೆ ಸರಿಯಲ್ಲ. ಅದನ್ನು ನನ್ನ ಮಕ್ಕಳಿಗೆ ವಿಭಾಗ ಮಾಡಿಕೊಟ್ಟಿದ್ದೇನೆ ಎಂದರೆ ಸರಿ. ಉಳಿಕೆ ಆಸ್ತಿಗಳನ್ನು ನನ್ನ ಮಕ್ಕಳು ಕೆಲಸ ಮಾಡಲಿ ಎಂದು ಕೊಟ್ಟಿಲ್ಲ. ವಾದಿ ಸರ್ವೆ ನಂ.95ಕ್ಕೆ ತಕರಾರು ಮಾಡಿದ್ದರಿಂದ ನನ್ನ ಮಕ್ಕಳ ಹೆಸರಿಗೆ ಖಾತೆ ಮಾಡಿಕೊಟ್ಟಿದ್ದೇನೆ ಎಂದರೆ ಸರಿಯಲ್ಲ. ಸರ್ವೆ ನಂ.95ರಲ್ಲಿ ವಾದಿಯ ಹೆಸರಿಗೆ ಬಂದ 2 ಎಕರೆ ಎನ್ನುವುದನ್ನು 1 ಎಕರೆ ತಿದ್ದುಪಡಿ ಮಾಡಿಕೊಂಡು, ನನ್ನ ಹೆಸರಿಗೆ ಬಂದಿದ್ದ 1 ಎಕರೆ ಇದ್ದುದನ್ನು 2 ಎಕರೆ ಎಂದು ತಿದ್ದುಪಡಿ ಮಾಡಿಕೊಂಡಿದ್ದಾರೆ ಎಂಬುದನ್ನು ತಿದ್ದುಪಡಿ ಮಾಡಿಲ್ಲ ಎಂದು ಸಾಧಿಸಿರುತ್ತಾರೆ. ನನ್ನ ತಂದೆಯ ಕಡೆಯಿಂದ ನನಗೆ ಎಲ್ಲಾ ಸರ್ವೆ

ನಂಬರುಗಳಿಂದ 4 ಎಕರೆ ಚಿಲ್ಲರೆ ಬಂದಿದೆ. 1ನೇ ಪುತಿವಾದಿಗೆ 3 ಎಕರೆ 35 ಗುಂಟೆ ಬಂದಿರಬಹುದು. ವಾದಿಗೆ 3 ಎಕರೆ ಚಿಲ್ಲರೆ ಬಂದಿರಬಹುದು. ನನ್ನ ತಂದೆ ತಾಯಿ ನನ್ನ ಬಳಿ ಇದ್ದುದರಿಂದ ನಾನು ಓದದೇ ಇರುವುದರಿಂದ ನನ್ನ ತಂದೆಯ ಮಗಳ ಮಗಳನ್ನು ನಮ್ಮ ಮನೆಯಲ್ಲಿಯೇ ಇಟ್ಟುಕೊಂಡಿರುವುದರಿಂದ 1 ಎಕರೆ ಆಸ್ತಿ ನನಗೆ ಹೆಚ್ಚಾಗಿ ನನ್ನ ತಂದೆಯವರೇ ಬರೆದಿದ್ದರು ಎಂದು ಹೇಳಿರುತ್ತಾರೆ. ವಿಭಾಗ ಪಟ್ಟಿಯಲ್ಲಿ 1 ಎಕರೆ ಹೆಚ್ಚಾಗಿ ಕೊಟ್ಟಿರುವುದನ್ನು ಬರೆಯಲಿಲ್ಲ. ನಾನು ಜಮೀನಿನ ಖಾತೆ ಮಾಡಿಸಲು ವಾದಿಯನ್ನು ಕರೆದುಕೊಂಡು ಹೋಗಿಲ್ಲ ಎಂದು ಒಪ್ಪಿರುತ್ತಾರೆ.

16. The defendant No.2 specifically stated and contended in his written statement that due to take care of his sister daughter additional 1 acre of land allotted to his share at the time of partition. He admits the same fact is not mentioned in paluparikath. DW.1 clearly admits the share allotted to the plaintiff, defendant No.1 and 2. But he denied alteration of extent in old Sy.No.95 new Sy.No.107. Either parties not produced original paluparikath. In the year 2017, during pendency of the suit the defendant No.2 partitioned only old Sy.No.95, new Sy.No.107 to his children. But he did not partition all the properties, which were get from his father. The plaintiff suggested regarding due to alteration of extent to deprive the right of the plaintiff intentionally you partition only disputed survey number. The DW.1 categorically denied but he did not produced original

paluparith. Either parties are take proper steps to produce original document, i.e. paluparikath in whose custody was there. But oral evidence of both parties clear that partition took place between plaintiff, defendant No.1 and 2. The defendant No.1 started to living separately after 05/04/1979. Then defendant No.1 and 2 are lived jointly till 1984. After 5 years from 05/04/1979 defendant No.1 and 2 started living separately. The defendant No.1 and 2 are changed the khatha on the basis of paluparikath. The revenue records mutated as per the alteration of paluparikath. The defendant No.2 makes alteration in paluparikath before making khatha. The plaintiff is being younger brother he was faith and trust with his elder brothers, he did not looking into the revenue records.

17. Learned counsel for the plaintiff in his written arguments and referred and relied Hon'ble Apex court decision **2016(4) KCCR 3692 Karnataka High Court Haleshappa and another Vs.K.N.Basavarajappa**. In this case apex court held that in a suit for partition U/s 37 of specific relief act plaintiff claiming suit property as given to him under partition supported by revenue records, defendants not disproving the partition below court concurrently holding plaintiff to be owner of the suit property is proper.

18. In the present case in hand there is no dispute regarding relationship. During the trial DW.1 clearly admitted partition took place between plaintiff and defendants and all of them in physical possession and enjoyment of the share allotted to them. The only dispute between parties regarding in **Sy.No.107 extent is whether 2 acre belongs to plaintiff or defendant No.2?** Both have not produced original paluparikath. The defendant No.2 being elder member of the family he making khatha and created revenue records in his name for extent of 2 acre in Sy.No.107 but actual physical possession is with the plaintiff. He clearly admits there is alteration of extent of disputed survey number, there is no mention any shara, why additional extent of 1 acre allotted to defendant No.2. For what reason, the defendant No.2 partition only disputed survey number, extent to his children's, it was not properly explained by the defendant No.2. So under such circumstances it can be clearly come to conclusion that the defendant No.2 intentionally fabricate the extent of disputed survey number and he success in build up revenue records. Therefore, he partitioned only disputed survey number, extent to his children's during pendency of this suit. The considering oral evidence of the both parties it can be safely held that by virtue of partition which had taken place between plaintiff and defendants in respect of their

ancestral and joint family properties. The suit schedule properties allotted to the plaintiff share the defendant No.2 himself mutated the khatha in favour of the plaintiff and defendant No.2. It was not noticed to plaintiff until interference before instituting this suit the plaintiff issued legal notice as per Ex.P9 to the defendants. He clearly stated that the defendant No.2 fabricated certain records we will going to institute criminal case against the defendant No.2. The defendant No.2 stated you can go to court and get your land from court. The conduct of defendant No.2 shows that he is not law abiding citizen. The plaintiff stated in the plaint and Ex.P9 plaintiff and 2nd defendant jointly constructing the house. The said house was not partitioned equally between plaintiff and defendant No.2. The defendant No.2 just handed over chattel house to plaintiff. The plaintiff did not produce any document to show suit schedule item No.10 but he include in the suit item No.10 chattel house is in possession of plaintiff. The present suit is filed for the relief of injunction is not claiming relief of partition in this suit. There is no any document to item No.9 and 10. DW.1 admits item No.2, 3 and 4, 6, 7,8 are in the possession of plaintiff as per the paluparikath. Plaintiff did not produce any panchayath records which is in the name of plaintiff pertaining to the schedule item No.9 and 10. In the above circumstances without any

document court cannot come to conclusion, at the time of filing suit plaintiff is in possession and enjoyment of the suit item No.9 and 10. The plaintiff is successfully proved partition had taken place between plaintiff and defendant No.2 and thereafter, they are in physical possession and enjoyment of the suit schedule item No.2 to 8 and also plaintiff establish before this court that by showing xerox copy of panchayath paluparikatha. The suit schedule item No.1 extent was altered and there is no mentioning reason for alteration of extent. So from looking into the above facts and circumstances, it can be held that plaintiff is in physical possession of item No.1 to 8. On entire appreciation of the evidence on record, it can be said that in view of clear admission by DW.1 as well as other oral and documentary evidence on record, it can be clear that plaintiff has successfully proved that he is in possession of suit item No.1 to 8 within its given boundaries and extent. So far as interference by defendant No.2 with respect of possession of suit properties by the plaintiff is concerned. The plaintiff has clearly averred both in his plaint as well as in his evidence and also proved that the defendant No.2 and his children's success in get khatha in item No.1 schedule additional extent and they are trying measure property for interfering into the suit item No.1 property. But the defendant did not produce any contra evidence. Under

such circumstances it is duty of the court to protect possession of the plaintiff. Moreover the DW.1 in his cross examination clearly and categorically admitted regarding fabricating of extent and he had admitted about paluparikath, effect in the year 1979. It is settled possession by the plaintiff. Hence plaintiff is entitled for the relief of permanent injunction. Hence, answered **Issue No.1 Affirmative, Issue No.2 to 4 Partly in the affirmative.**

19. **Issue No.5**: As per the aforesaid discussion, I proceed to pass the following:

ORDER

The suit of the plaintiff is hereby partly decreed.

Consequently, it is ordered that by way of Permanent Injunction is hereby granted in favour of plaintiff against the defendants restraining them or anybody or any person from interference with the plaintiff's peaceful possession and enjoyment in respect of suit item No.1 to 8 properties.

Under the facts and circumstances of this case, plaintiff has to bear his own cost.

Draw decree accordingly.

(Dictated to the stenographer, transcribed and typed by her, the same is corrected and then pronounced

by me in the open court on this the 19th day of October 2019)

(R.Mahesha)
Civil Judge & JMFC.,
Holenarasipura.

ANNEXURE

1. List of witnesses examined for the plaintiff/s side:

PW-1 : Yogegowda
PW-2 : A Channegowda

2. List of documents marked for the plaintiff/s side:

Ex.P1 to 8 : RTC extract
Ex.P9 : Legal notice
Ex.P10 : Postal receipts
Ex.P11 : Postal acknowledgements
Ex.P12 : Reply

3. List of witnesses examined for the defendant/s side:

DW-1 : Krishnegowda

4. List of documents marked for the defendant/s side:

Ex.D1 : Old RTC extract
Ex.D2 & 3 : RTC extract
Ex.D4 & 5 : Mutation extracts
Ex.D6 : Akar Bandh
Ex.D7 : Record of rights
Ex.D8 : Index of land

(R.Mahesha)
Civil Judge & JMFC.,
Holenarasipura.