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:OS.No.192/2022:

KAHS810015812022



Presented on:18-02-2022
Registered on:18-02-2022
Decided on :03-08-2025
Duration: 03 years, 05 months, 15 days.

**IN THE COURT OF I ADDL. CIVIL JUDGE AND JMFC,
SAKALESHPURA.**

:PRESENT :

Smt. Shruthi K.S.,B.A.,LL.B.

I Addl. Civil Judge & JMFC,

Sakaleshpura

Dated this the 03rd day of August, 2026

O. S.No.192/2022

PLAINTIFF :

Smt.Basamma W/o late
Basavaraju, Aged about 87 years,
Yadavarahally Village, Hettur
Hobli, Sakaleshpura Taluk.

(Reptd.by Sri.**S.K.**,Adv.)

/ Vs./

DEFENDANT :

Yashoda @ Latha S/o
Sannamallegowda, Aged
about 50 years, R/o

KAHS810015812022



Siddapura Village, Kasaba
hobli, Alur Taluk, Hassan
District.

(Reptd.by **Sri.B.P.V.**,Adv.)

:JUDGMENT:

This is a suit filed by the plaintiff against the defendant seeking the relief of declaration, permanent Injunction and mandatory injunction.

2. Brief facts of the plaintiff's case is as under:-

It is submitted by the plaintiff that suit schedule property is originally belonging to her husband namely Basavaraju. Subsequently, in a partition effected between plaintiff and his children, the suit schedule property has been fallen to the share of the plaintiff for their maintenance, and she is the absolute owner in continuous possession and enjoyment of the suit schedule

KAHS810015812022



property. She is cultivating the said property growing coffee crops and forest timber trees on suit schedule property. The katha of the suit schedule property was standing in her name. However, recently, in the year 2019, defendant got changed katha of the property in her name without the knowledge of the plaintiff, and when the same was questioned by the plaintiff, defendant has given an evasive reply. Now the katha of the property stands jointly in the name of both plaintiff and defendant. Recently, when the plaintiff obtained RTC to apply for bank loan, she came to know that name of the defendant was recorded in the RTC. Although the plaintiff previously submitted an application to the Tahasildar, Sakaleshpura to transfer katha exclusively to her name, the katha was not updated. Plaintiff is in continuous possession and

KAHS810015812022



cultivating the suit schedule property. She is paying regular taxes to the concerned authority.

It is further submitted that defendant has no manner of right, title or interest over the suit schedule property misusing the entry of her name in the RTC. The defendant in collusion with the revenue official is attempting to sell the suit property and deprived the plaintiff and her right. Under these circumstances, despite all relevant title documents pertaining to the suit property with the plaintiff, the defendant colluding with the revenue authority and Tahasildar has refused to change katha back to the name of the plaintiff. Hence, plaintiff constrained to file this suit.

3. Subsequent to institution of the suit, this Court has issued summons to the defendant. In pursuance to

KAHS810015812022



service of summons the defendant has appeared before the Court through her Counsel and filed her detailed written statement. She has admitted that the suit schedule property is originally belonging to husband of the plaintiff. She denied all the other averments of the plaint and submitted that the suit schedule property is the ancestral property of husband of plaintiff and father in law of defendant namely Basavaraju and mother in law of plaintiff. Plaintiff has 3 sons namely; Lokesh, Manjunath and Mohan Kumar. The defendant is the wife of Mohan Kumar, who being the daughter-in-law of the plaintiff. The suit schedule property belonging to joint family of the plaintiff and defendant. As per the partition deed dtd:29-10-2009 entered between the parties and family members of the plaintiff and defendant, the suit schedule property were jointly allotted to the family of both plaintiff and

KAHS810015812022



defendant for their maintenance. In accordance with the said partition deed, katha was effected jointly in the name of both plaintiff and defendant. Now, the plaintiff with an intention to deceive the defendant has filed this false suit. Since both plaintiff and defendant are joint owners and in joint possession and enjoyment of the suit properties, plaintiff is not entitled for the relief sought in the suit. Defendant has also spent lakhs of rupees towards development of the suit schedule property.

4. It is further submitted that as per the partition deed dtd:29-10-2009 katha of the property jointly registered in the name of plaintiff and defendant. Despite being aware of this fact, plaintiff filed this false suit relying upon the false boundaries . The suit is barred by limitation. The suit schedule property of the property consists commercial crops and as such, the total market

KAHS810015812022



value of the suit property is Rs.50,00,000/-. Hence, this Court has no territorial jurisdiction to try this suit. Accordingly, prayed to dismiss the suit.

5. In order to substantiate the case, the GPA holder of the plaintiff namely Chintan Y.M. examined as P.W.1 and he has filed his Chief Examination Affidavit in lieu of his Chief Examination and produced 8 documents, which have been been marked as Exs.P.1 to 8 and closed his side. Even after giving sufficient opportunity to the defendant to prove her defence, she neither adduced oral evidence nor produced any documentary evidence on her behalf. Hence, the defendant evidence is taken as nil.

6. Heard arguments and perused the materials available on record.

KAHS810015812022



7. On the basis of the above pleadings, the my learned Predecessor in office has framed the following Issues for consideration:-

1. Whether plaintiff prove that she is the absolute owner of the suit schedule property and had acquired right over the same in the family partition ?

2. Whether the plaintiff proves that she is in peaceful possession and enjoyment of suit schedule property as on the date of suit ?

3. Whether the plaintiff proves the alleged interference by the defendant ?

4. Whether defendant proves that she had jointly acquired right over the suit schedule

KAHS810015812022



property along with plaintiff in the family partition under partition deed dated 29-10-2009 ?

5. Whether defendant proves that she is in joint possession and enjoyment of the suit schedule property along with plaintiff and accordingly khata was jointly mutated in the name plaintiff and defendant ?

6. Whether the defendant proves that suit of plaintiff is not properly valued and not paid proper court fee ?

7. Whether plaintiff is entitled for the relief of declaration as prayed for ?

KAHS810015812022



8. Whether plaintiff is entitled for the relief of permanent injunction as prayed for ?

9. Whether plaintiff is entitled for relief of damages as prayed in the plaint ?

10. What Order or decree ?

8. My findings to the above points are as under:

ISSUES NO.1 to 3 and

7 to 9 : In the Negative

ISSUES NO.4 TO 6:Does not survive for consideration.

ISSUE NO.10: As per final order

for the following:

:REASONS:

POINTS NO.1 TO 3 and 7 to 9:- Since these issues are interconnected with one another, they are taken up together for common discussion in order to avoid repetition of facts.

9. This Court on careful perusal of the oral evidence adduced by GPA holder of the plaintiff and also the

KAHS810015812022



documentary evidence produced by her, it is seen that this is a suit filed by the plaintiff for the relief of declaration and consequential relief of permanent injunction and mandatory injunction. It is the case of the plaintiff that the suit schedule property originally belonging to her husband namely Basavaraj under the partition deed dtd:25-06-2001, and the suit schedule property has been fallen to the share of plaintiff. Since the date of said partition, katha of the said property was mutated in her name and she is in cultivation and possession of the said property. The defendant without the knowledge of the plaintiff has managed to get change the katha of the property into her name. Now, the katha of the said property is jointly standing in the name of plaintiff and defendant. Whereas, the defendant has no manner of right, title or interest over

KAHS810015812022



the said property. The plaintiff alone is the absolute owner of the suit schedule property as per the partition deed.

10. The initial burden lies upon the plaintiff to prove her title and possession over the suit properties. In order to establish the same, the GPA holder of the plaintiff namely Chintan Y.M. examined as P.W.1, wherein, he has reiterated the plaint averments and got marked as many as 8 documents Exs.P.1 to 8. Ex.P.1 is the partition deed dated 25-06-2001; Exs.P.2 and 3 are the Encumbrance Certificates; Ex.P.4 is the Mutation Register Extract bearing MR HR 18-19; Ex.P.5 is the RTC in respect of the land bearing Sy.No.50/2; Ex.P.6 is the RTC in respect of the land bearing Sy.No.84/5; Ex.P.7 is the RTC in respect of the land bearing Sy.No.10; Ex.P.8 is the RTC in respect of the land bearing Sy.No.84/7

KAHS810015812022



11. It is the defence taken by the defendant that the suit schedule property is allotted to the share of the plaintiff and defendant jointly. Accordingly, as per the recitals of the partition deed katha of the property was mutated in the name of plaintiff and defendant jointly and they are in joint possession of the suit schedule property. In order to deprive the right of the defendant, plaintiff has filed false suit claiming false boundaries. But, the defendant in order to substantiate the said contention, she has neither stepped into the witness box to adduce her oral evidence nor produced any documentary evidence.

12. I have perused the entire documentary and oral evidence placed on record. On perusal of the same, it discloses that Ex.P.1 is the partition deed dated 25-06-2001, wherein, it reflects as to the property belonging to the family of plaintiff, the said property has been divided

KAHS810015812022



amongst the plaintiff and her sons. Under the said partition deed 'A' schedule property is allotted to the share of Y.B.Manjunath which consists of 6 survey numbers; 'B' Schedule property is allotted to Y.B.Mohan Kumar which also consists of 6 survey numbers and 'C' Schedule property is allotted jointly in the name of plaintiff and Y.B.Lokesh, which consists of 7 survey numbers. But, there is no recital in the said partition deed about allotment of suit schedule property jointly in the name of wife of Mohan Kumar ie; defendant and plaintiff as alleged by the defendant. Moreover, separate property been allotted to the husband of the defendant and his family. Hence, the contention of the defendant that suit properties are allotted jointly in her and plaintiff's name is not acceptable one.

13. Further on perusal of recitals of partition deed in 'C' Schedule property Item No.6 is Sy.No.50/2 and Item

KAHS810015812022



No.7 is Sy.No.84/5 which is the disputed suit schedule properties as described in the plaint as 'A' and 'B' schedule.

For better appreciation and proper adjudication it is just and requisite to reproduce the boundaries as mentioned in the Ex.P.1 partition deed which is as follows:

The boundary in respect of the land bearing Sy.No.50/2:

Towards East: Wet land of Y.D.Nanjappa

Towards West: Wet land of Y.D.Nanjappa

Towards South: Wet land of Y.B.Mohankumar @
Y.B.Mahesh.

Towards North: Wet land of Y.E.Palaksha.

The boundary in respect of the land bearing Sy.No.84/5:

Towards East: Path way

Towards West: paddy field

Towards South: Path way

Towards North: Coffee garden of B.N.Jayaraj

KAHS810015812022



The boundaries as mentioned in the schedule of the plaint in respect of the land bearing Sy.No.50/2 is as follows:

Towards East: Farm of O.E.Palaksha

Towards West: Farm of Y.B.Mohan Kumar

Towards South: Farm of Kalingappa

Towards North: Farm of Virupaksha

The boundaries as mentioned in the schedule of the plaint in respect of the land bearing Sy.No.84/5 is as follows:

Towards East: Garden of Nagesh

Towards West: House of Y.B.Manjunath

Towards South:Garden of Jai Prakash

Towards North: Garden of Jai Prakash

Therefore on careful scrutiny of the boundaries as mentioned in the partition deed to that of the schedule as described in the plaint there is variance in respect of the boundaries. In this eventuality this Court would rely upon the decision rendered by the Hon'ble High Court of Karnataka in the case of ***(Sri.Abdulla Sab Since deceased Represented by his Lrs V/s Smt.Hanifa Bi and other, RFA***

KAHS810015812022



No.1756/2007(DEC-INJ), dated 28.11.2013) has held that **when suit property is not identifiable, declaration and injunction cannot be granted.** Even though the defendant has neither adduced any oral evidence nor produced any documentary evidence, this *ipsofacto* does not prove the case of the plaintiff. The plaintiff cannot rely on the weakness of the defendant. She has to establish her case independently by producing cogent, reliable and relevant documents. On perusal of the documents produced by the plaintiff it is observed that boundaries mentioned in Item No.6 and 7 of 'C' Schedule properties in partition deed dtd:25-06-2001 and the boundaries described in plaintiff schedule properties are differs from one another. Moreover, she has not offered any explanation in her plaint regarding changes of boundaries in respect of 'A' and 'B' schedule properties. When the plaintiff herself has failed to establish

KAHS810015812022



her own case then answering of the Issues No.4 to 6 does not survive for consideration. When such being the case, this Court cannot grant the relief of declaration in favour of the plaintiff when there is discrepancy in the boundaries. Hence, the above said decision is aptly applicable to the present case on hand. Further, the defendant has not stepped into the witness box to adduce her evidence or produced any documents in order to substantiate her contention. Accordingly, the **Issues No.1 to 3 and 7 to 9 are answered in the 'Negative' and Issues No.4 to 6 does not survive for consideration.**

ISSUE NO.10:-

14. In the touchstone of the reasons assigned supra on the above points, this Court proceed to pass the following:

KAHS810015812022



:ORDER:

**The suit filed by the plaintiff is
hereby dismissed.**

No order as to costs.

Draw decree accordingly.

(Dictated to the stenographer, transcribed by him,
corrected by me and then pronounced in the open Court on
this the **3rd day of August, 2026**)

**(Shruthi.K.S.)
I Addl.Civil Judge and JMFC
Sakaleshpura**

:ANNEXURES:

I LIST OF WITNESSES EXAMINED FOR THE PLAINTIFF:-

P.W.1 : Chintan Y.M.

II LIST OF EXHIBITS MARKED FOR THE PLAINTIFF:-

Ex.P.1 : Partition deed dtd:25-06-2001

Exs.P.2 : Encumbrance Certificates

KAHS810015812022



and 3

- Ex.P.4 : MR Extract bearing MRHR 18-19**
- Ex.P.5 : RTC in respect of the land bearing Sy.No.50/2**
- Ex.P.6 : RTC in respect of the land bearing Sy.No.84/5**
- Ex.P.7 : RTC in respect of the land bearing Sy.No.10**
- Ex.P.8 : RTC in respect of the land bearing Sy.No.84/7**

III LIST OF WITNESSES EXAMINED AND DOCUMENTS MARKED FOR THE DEFENDANT:

- NIL-

**(Shruthi.K.S.)
I Addl.Civil Judge and JMFC
Sakaleshpura**