

IN THE COURT OF THE SENIOR CIVIL JUDGE AND

JMFC., BYADGI.

PRESENT:

SHRI. IBRAHIM M. MUJAWAR.

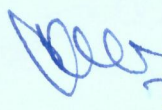
B.A.,L.L.B.(Spl.)

**Senior Civil Judge & JMFC,
Byadgi.**

Dated on this 30th day of October 2019

O.S. NO.19 of 2019

- PLAINTIFFS : 1)** Basavantappa S/o Tirakappa Talawar
@ Basannanavar, Age: 73 years,
Occ: Agriculture, R/o: Kalledevar,
Tq: Byadgi, Dist: Haveri.
- 2)** Smt. Puttavva W/o Bheemappa Attikatti,
Age: 75 years, Occ: Household work,
R/o: Kalledevar, Tq: Byadgi,
Dist: Haveri.
- 3)** Smt. Karabasavva W/o Bharmappa
Talawar, Age: 56 years, Occ: Household
work, R/o: Kumbar oni, Guttal,
Tq: Dist: Haveri.
- 4)** Smt. Puttavva W/o Hanumantappa
Talawar, Age: 34 years, Occ: Household
work, R/o: Guddallimathswami oni,
Hosaritti, Tq: Dist: Haveri.
- 5)** Smt. Jayavva W/o Arjun Malladad,
Age: 32 years, Occ: Household work,

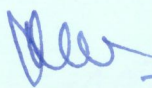
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R/o: Teradahalli, Tq: & Dist: Haveri.

- 6) Smt. Mahadevakka W/o Maradibasappa,
Talawar @ Basannanavar,
Age: 54 years, Occ: Household work,
R/o: Kalledevar, Tq: Byadgi,
Dist: Haveri.
- 7) Smt. Sumitravva W/o Shekhappa
Adivennanavar, Age: 34 years,
Occ: Household work,
R/o: Kurgund, Tq: & Dist: Haveri.
- 8) Chandrashekhar S/o Maradibasappa
Talawar @ Basannanavar,
Age: 32 years, Occ: Agriculture,
R/o: Kalledevar, Tq: Byadgi,
Dist: Haveri.
- 9) Suresh S/o Maradibasappa
Talawar @ Basannanavar,
Age: 30 years, Occ: Agriculture,
R/o: Kalledevar, Tq: Byadgi,
Dist: Haveri.
- 10) Hanumesh S/o Maradibasappa
Talawar @ Basannanavar,
Age: 27 years, Occ: Agriculture,
R/o: Kalledevar, Tq: Byadgi,
Dist: Haveri.

(Plaintiffs are repled. by Sri. M.K.K. advocate)

VS.

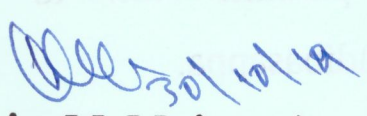
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- DEFENDANTS:** 1) Hanumantappa S/o Tirakappa Talawar,
Age: 71 years, Occ: Agriculture,
R/o: Bannihatti, Tq: Byadgi,
Dist: Haveri.
- 2) Bheemappa S/o Honnappa Talawar,
Age: 50 years, Occ: Handicapped,
R/o: Bannihatti, Tq: Byadgi,
Dist: Haveri.

(D-1 is in person)

(D-2 is reptd. by Sri. H.M.G. advocate)

Date of institution of the suit	15-06-2019
Nature of the suit	Suit for partition and separate possession
Date of commencement of Recording of evidence	23-10-2019
Date on which the judgment was pronounced	30-10-2019
Total Duration	Year/Months/Days
	0 04 15


(Ibrahim M. Mujawar)

**Senior Civil Judge & JMFC.,
Byadgi.**

JUDGMENT

The plaintiffs have filed the present suit against the defendants for the relief of partition and separate possession in respect of joint family properties.

1. The brief facts of the plaintiffs case are as follows;

It is stated that the plaintiffs and defendant No.1 have a common propositus namely Tirakappa. The said propositus Tirakappa has wife namely Tirakavva. The propositus Tirakappa and Tirakavva have five children namely 1) Puttavva (Plaintiff No.2), 2) Basavantappa (Plaintiff No.1), 3) Hanumantappa (Defendant No.1), 4) Bharmappa and 5) Maradibasappa. The propositus Tirakappa has died on 20-07-1962. Likewise, the Tirakavva wife of the propositus Tirakappa also has died. Likewise, the sons of the propositus Tirakappa namely Bharmappa and Maradibasappa also have died. The plaintiff No.3 is wife and plaintiff No. 4 and 5 are children of the deceased Bharmappa. Likewise, the plaintiff No.6 is wife and plaintiff No.7 to 10 are children of the deceased Maradibasappa.

It is further stated that the the suit schedule-B properties are ancestral and joint family properties of the plaintiffs and

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defendant No.1. The defendant No.2 is son of the brother of the propositus Tirakappa. The head of the Branch of the defendant No.2 already has got share in other properties. The defendant No.2 has no share or right in the suit properties. But, the name of the defendant No.2 is having appeared in the records of the suit properties, the defendant No.2 is made as party to the suit in order to avoid future complication.

It is further stated that yet no partition has taken place among the plaintiffs and defendant No.1 in respect of suit properties. The plaintiffs have their legitimate share in the suit properties. The plaintiffs have asked their share in the suit properties to the defendant No.1. But, defendant No.1 has not given share in the suit properties to the plaintiffs. Hence, the plaintiffs are constrained to file the present suit for their legitimate share. Hence, the plaintiffs have prayed to decree their suit and allot their respective share in the suit properties.

2. On registration of suit, the suit summons were issued to the defendant No.1 and 2. The defendant No.1 has appeared to the court in person. But, he did not file written statement opposing the suit of the plaintiffs. The defendant No.2 has appeared to the court through counsel and filed his written


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statement admitting the suit of the plaintiffs.

3. The following issues have been framed.

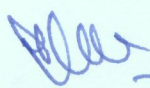
ISSUES

1. Whether the plaintiffs prove that themselves and defendants constitute Hindu undivided Joint family and suit properties are their joint family properties?
2. Whether the plaintiffs prove that they are entitled for 4/5th share in the suit properties?
3. Whether the plaintiffs are entitled for partition and separate possession in suit properties?
4. What order or decree?

4. The plaintiffs in order to prove their case have got examined the plaintiff No.8 as PW-1, and got marked 7 documents as Ex.P-1 to 7 and got closed their side of evidence.

5. Neither the defendant No.1 nor the defendant No.2 have adduced any evidence inspite of sufficient opportunities. Hence, their evidence has been taken as nil.

6. I have heard the arguments from both the side, and perused the case file.


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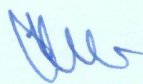
7. On the basis of material available on the record, my findings to the above issues are as follows;

Issue No.1	:	In the affirmative.
Issue No.2	:	Partly in the affirmative.
Issue No.3	:	In the affirmative.
Issue No.4	:	As per the final order, for the following reasons;

REASONS

9. **ISSUE NO.1 :-** The plaintiffs in order to prove that themselves and defendant No.1 constitute Hindu undivided joint family and suit properties are their joint family properties, have relied upon the oral evidence of PW-1 and documentary evidence of Ex.P-1 to 7.

10. The PW-1 has filed his affidavit in lieu of his oral chief examination. The PW-1 has deposed that himself and other plaintiffs and defendant No.1 have a common propositus namely Tirakappa and the said propositus Tirakappa had wife namely Tirakavva and the propositus Tirakappa and Tirakavva have five children namely 1) Puttavva (Plaintiff No.2), 2) Basavantappa (Plaintiff No.1), 3) Hanumantappa (Defendant No.1), 4) Bharmappa and 5) Maradibasappa, and the propositus Tirakappa and his wife Tirakavva have died, and likewise the Bharmappa and Maradibasappa who are sons of the propositus

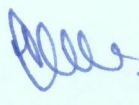

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Tirakappa also have died, and plaintiff No.3 to 10 are the legal heirs of the said deceased Bharmappa and Maradibasappa, and suit properties are their joint family properties.

11. The defendants have not cross examined the PW-1 inspite of sufficient opportunities. Therefore, the evidence of the PW-1 remained unquestioned.

12. The plaintiffs have relied upon the documents of Ex.P-1 to 7. The Ex.P-1 is mutation entry No. 15/22 dated 08-10-1963 in respect of suit properties and another one property. Ex.P-2 to 4 are record of rights of suit schedule properties standing in joint names of the plaintiffs and defendants. Ex.P-5 to 7 are also mutation entries in respect of suit properties.

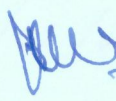
13. Since the oral evidence of PW-1 and documentary evidence of Ex.P-1 to 7 remained unquestioned, there is no reason to disbelieve the same. The oral evidence of the PW-1 and documentary evidence of Ex.P-1 to 7 clearly prove that the plaintiffs and defendants constitute Hindu joint family and suit properties are their joint family properties. Hence, I hold that the plaintiffs have proved that themselves and defendant No.1 constitute Hindu joint family and suit properties are their joint family properties. **Hence, I have answered issue No.1 in the affirmative.**

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14. ISSUE NO.2:- The plaintiffs have contended that they are having 4/5th share together in the suit properties.

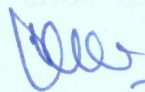
15. According to the plaintiffs themselves, the defendant No.2 is son of the brother of the propositus Tirakappa. Likewise, as per the contention of the plaintiffs, the father of the defendant No.2 has got share in the other properties and therefore, the defendant No.2 is having no share in the present suit schedule properties. This contention of the plaintiffs clearly reveals that the plaintiffs are impliedly admitting that the suit properties have come to the share of the propositus Tirakappa in the partition between the said propositus Tirakappa and his brother Honnappa. Hence, the fact that the suit properties are ancestral properties of the plaintiffs and defendants would be clearly proved.

16. Admittedly, the propositus Tirakappa has died in the year 1963. Likewise, the plaintiff No.2 is daughter and other four children of the propositus Tirakappa are sons. Since the propositus Tirakappa having died before coming into force of Hindu Amendment Succession Act 2005, the plaintiff No. 2 being daughter of the propositus Tirakappa can not be said to be co-parcener along with her father and brothers. Only the propositus Tirakappa and his four sons are co-parceners. The

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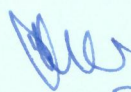
plaintiff No. 2 being daughter of the propositus Tirakappa would get equal share in the share of the propositus Tirakappa only. First of all, the suit properties would have to be divided into 5 equal division among the propositus Tirakappa and his four sons. In 1/5th share allotted to the propositus Tirakappa only, the plaintiff No.2 would get equal share among her brothers. But, the plaintiff No.1 Basavantappa, and defendant No.1 Hanumantappa and deceased Bharmappa and Maradibasappa would get equal share with the propositus Tirakappa. Since, the Bharmappa having died leaving his legal heirs as the plaintiff No. 3 to 5, they would get equal share of the deceased Bharmappa. Likewise, the Maradibasappa also having died, his legal heirs the defendant No.6 to 10 would get the equal share of the deceased Maradibasappa.

17. The propositus Tirakappa would get 1/5th share in the suit properties. Likewise, his four sons also would get 1/5th share each in the suit properties. The plaintiff No.2 being daughter would get equal share in the 1/5th share of the propositus Tirakappa only. If the 1/5th share of the propositus Tirakappa is divided among the plaintiffs and defendant No.1, then the plaintiff No. 2 would get 1/5th share in 1/5 share of the propositus Tirakappa. Likewise, the plaintiff No.1 would get

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6/25th share in the suit schedule properties. Likewise, the plaintiff No.3 to 5 are being legal heirs of the Bharmappa would get 6/25th share together in the suit schedule properties. Likewise, the plaintiff No.6 to 10 are being legal heirs of the Maradibasappa would get 6/25th share together in the suit schedule properties. Hence, the plaintiff No.2 would get only 1/25th share in the suit schedule properties. Hence, in view of above observations, **I have answered issue No. 2 partly in the affirmative.**

18. ISSUE NO.3:- Issue No.3 is as to entitlement of partition and separate possession in respect of share of the plaintiffs. Already in issue No.1 and 2, it has been held that the plaintiffs and defendant No.1 are members of Hindu joint family and suit properties are their joint family properties. Likewise, it has been held that the plaintiffs are having their respective share in the suit properties. Hence, the plaintiffs have to be given their respective share in the suit properties by making partition and giving separate possession of the suit properties. There is no impediment to the plaintiffs for getting partitioned the suit properties and taking separate possession of the suit properties. Hence, I hold that the plaintiffs are entitled for partition and separate possession of their respective share in


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the suit properties. **Hence, I have answered issue No.3 in the affirmative.**

19. ISSUE NO.4:- For the reasons assigned on issue No.1 to 3, and findings given thereon, I proceed to pass following order;

ORDER

The suit of the plaintiffs is partly decreed.

In the result, it is held that the plaintiff No.1 is entitled for 6/25th share in the suit schedule properties.

Likewise, it is held that the plaintiff No.2 is entitled for 1/25th share in the suit schedule properties.

Likewise, it is held that the plaintiff No.3 to 5 together are entitled for 6/25th share in the suit schedule properties.

Likewise, it is held that the plaintiff No.6 to 10 together are entitled for 6/25th share in the suit schedule properties.

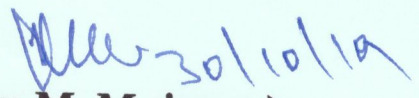

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Likewise, it is held that the defendant No.1 is entitled for 6/25th share in the suit schedule properties.

No order as to costs.

Draw preliminary decree accordingly.

(Dictated to the steno, typed by her, corrected and then pronounced by me in the open court on this 30th day of October 2019)


(Ibrahim M. Mujawar)
Senior Civil Judge & JMFC.,
Byadgi.

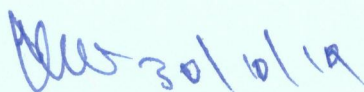
Annexures:

LIST OF WITNESSES EXAMINED ON BEHALF OF THE PLAINTIFFS:

PW.1 : Chandrashekhar Maradibasappa Talawar.

LIST OF DOCUMENTS EXHIBITED ON BEHALF OF THE PLAINTIFFS:

Ex.P.1 : Mutation entry No. 15/22.
Ex.P.2 : RTC of Sy. No. 37/1B.
Ex.P.3 : RTC of Sy. No. 78/3B.
Ex.P.4 : RTC of Sy. No. 98/3+4+5B.
Ex.P.5 : M.R.No. H58.
Ex.P.6 : M.R.No. H59.
Ex.P.7 : M.R.No. H32.

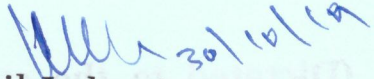


LIST OF WITNESSES EXAMINED ON BEHALF OF THE DEFENDANTS:

-Nil-

LIST OF DOCUMENTS EXHIBITED ON BEHALF OF THE DEFENDANTS:

-Nil-


Senior Civil Judge & JMFC.,
Byadgi.