

KACN220015202022



IN THE COURT OF THE ADDL. CIVIL JUDGE AND JMFC.,
GUNDLUPET

Present :

Smt. A.N.Kanthamma, B.A., LLB,
Addl. Civil Judge & JMFC
Gundlupet

Dated this the 13th day of February - 2024

O.S. No.258/2022

Plaintiffs:-

1. Chikkamma

W/o Late. G.M.Madashetty
Aged about 50 years,

2. Nagaraju

S/o Late. G.M.Madashetty
Aged about 23 years,

Plaintiff No.1 and 2 are R/o :
21st Ward, Hosuru,
Gundlupet Town.

3. Lakshmi

W/o Late. G.M.Madashetty
Aged about 21 years,
R/o : Banniguppa,
Oddaradoddi, Shivanalli Vilalge,
Ramanagar Taluk and District.

(By **Sri. S.N.** Advocate)

V/s

Defendants : 1. Venkatamma

W/o Late. Siddashetty
Aged about 60 years,

2. Mahadevashetty

S/o Late. Siddashetty
Aged about 39 years,

3. Nagashetty

S/o Late. Siddashetty
Aged about 36 years,

Defendant No.1 to 3 are R/at :
#596, Okkalageri Street,
Nanjanagudu Town and Taluk,
Mysuru District.

4. Gowramma

D/o Late. Siddashetty
Aged about 31 years,
R/at : Kumbara Street,
Shivapura village, Maddur Taluk,
Mandya District.

5. Gowramma

D/o Late. Basappa
Aged about 38 years,

6. Manju

S/o Late. Basappa
Aged about 36 years,

7. Mahesha

S/o Late. Basappa
Aged about 36 years,

Defendant No.5, 6 and 7 are R/o :
2nd Stage, 8th Ward,
Kumbara Street,
Gundlupet Town.

8. Hanumanthashetty

S/o Late. Madashetty
Aged about 50 years,
R/o : 5th Main Road,
Paduvarahalli,
Mysore District.

(Defendants No.1 to 7 are Exparte)

TABULATION OF EVENTS

Date of institution of the suit: **05.11.2022**

Nature of the suit : **Partition &
Separate Possession**

Date of commencement of
Recording evidence : **18.08.2023**

Date on which the judgment
Was pronounced : **13.02.2024**

		Year/s	Month/s	Day/s
Total duration	:	01	03	08

**Addl.Civil Judge & JMFC.,
Gundlupet.**

J U D G M E N T

This is a suit filed by the Plaintiffs against the Defendants for the relief of Partition and Separate Possession of their 1/4 share in suit schedule property and also to grant such other reliefs, which deems fit to grant in the circumstances of the case.

2. The brief facts of the Plaintiff case is that

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The 1st plaintiff is the mother of 2nd and 3rd plaintiff and the father-in-law of 1st plaintiff Late. Madashetty had four issues i.e., Late. Siddashetty, Late. Basappa, Late. Madashetty and Hanumanthashetty. It is submitted by the plaintiffs that among them, Siddashetty and Madashetty were already dead and Madashetty was the husband of 1st plaintiff and father of 2nd and 3rd plaintiff. It is submitted by the plaintiffs that 1st defendant is the wife of Late. Siddashetty and defendant No.2 to 4 are children of Siddashetty and 5th defendant is the wife of Late. Basappa and 6th and 7th defendants were children of Basappa. It is submitted by the plaintiffs that 8th defendant is the 4th son of Madashetty. It is submitted by the plaintiffs that Plaintiffs and defendants are members of the Hindu undivided family. It is submitted by the Plaintiffs that the suit schedule property is ancestral joint family properties of Plaintiffs and defendants. It is submitted by the plaintiffs that after the death of the husband of 1st plaintiff, she and her children were

residing with the plaintiff in another house. It is submitted by the plaintiffs that after the death of the husband of 1st plaintiff, all the plaintiffs and defendants are in joint possession of suit schedule property. It is submitted by the plaintiffs that plaintiffs have approached the defendants by demanding their share in the suit schedule property, but Defendants have given inadequate answer. It is submitted by the plaintiffs that panchayath was held in the village on 12.08.2020 and in the panchayath, the panchayathdars, elders and well wishers of the village advised the defendants to give the share in the suit schedule property, But the defendants have denied the plaintiffs share in the suit schedule property. Hence the plaintiffs have got issued legal notice dated 17.12.2021 demanding the defendants to effect partition of the suit schedule property and to give the share of the plaintiffs. In spite of receiving the notice the defendants have not divided the suit schedule properties and failed to give the share of the

plaintiffs in the suit schedule property. Subsequently, the 5th defendant illegally transferred the katha of the suit schedule property in his name without obtaining any permission of the plaintiffs and other defendants. It is submitted by the plaintiffs that knowing the said fact, plaintiffs have got issued legal notice dated 17.12.2021 demanding the defendant No.5 to effect partition of the suit schedule property and to give the share of the plaintiffs. In-spite of receiving the notice the defendant No.5 has not divided the suit schedule property. Hence, without any alternative, the plaintiffs have filed above suit. The Plaintiffs submit that the cause of action has arose on 12.08.2020, 17.12.2021 and 06.10.2022 and subsequently within the jurisdiction of this Hon'ble court. With these averments the Plaintiffs have sought for judgment and decree as sought.

3. Upon service of summons the Defendants No.1 to 7 have not appeared before this court, hence the defendants No.1 to 7 are placed exparte.

4. On basis of the above pleadings the following points are framed.

POINTS

- 1. Whether the Plaintiffs prove that the suit schedule property is joint family property of themselves and Defendants?**
- 2. Whether the Plaintiffs prove that they are entitled for the relief as prayed in the plaint?**
- 3. What order or decree?**

5. To substantiate their contention, the Plaintiffs have adduced evidence. The Plaintiff No.1 by name Chikkamma

has examined herself as PW.1 and got Exhibited 4 documents as per Ex.P-1 to Ex.P-4. The Defendants have not led evidence.

6. I have heard the arguments.

7. Now, my answers to above points are as follows:

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

REASONS

8. POINTS NO.1 AND 2 : These two points are interlinked with each other, hence they are taken up for common discussion to avoid the repetition of facts. Again I repeat, as defendants placed ex-parte, thus, there is no protest against the contentions raised by the Plaintiffs from the Defendants. However, it is well settled that the mere fact that the Defendants have not appeared before the Court itself is not

sufficient to conclude that the Plaintiffs are entitled for the relief sought for. Thus, it is the duty of the Plaintiffs to produce cogent and convincing materials for the perusal of the Court.

9. Again I repeat, according to Plaintiffs the suit property is joint family property of themselves and Defendants. Now, I proceed to discuss the evidence available on record.

10. It must be noted that the first Plaintiff No.1 by name Chikkamma has examined herself as PW.1. The PW.1 has filed her affidavit u/o 18 rule 4 CPC containing her examination-in-chief, wherein she has reiterated the entire plaint averments. The Defendants placed ex-parte. Hence, her evidence goes un-challenged. Hence, I proceed to discuss the documents produced by the Plaintiff.

11. The Ex.P-1 is the copy of e-swattu katha pertaining to property No.18-507-35/A, measuring East to West 4.80 meter and north to South 14.50 meters situated at 2nd Stage, 8th Ward, Kumbara Street, Gundlupet town and it is standing in the name of Gowramma and Basappa.

12. The Ex.P-2 is the acknowledgment dated 09.05.2022 given by Town Municipal, Gundlupet. The Ex.P-3 is the genealogical tree affidavit. The Ex.P-4 is the certified copy of assessment register extract in respect of property No.448/360, measuring East to West 4.80 meters and North to South 14.50 meter and it is standing in the name of Sannamma W/o Chikka Gopalashetty.

13. Keeping in the view of the information available in the above documents, now I proceeded discuss the oral evidence available on record. As has been stated above the Plaintiff No.1 by name Chikkamma has examined herself as

PW1, the PW1 has filed affidavit Under Order 18 Rule 4 in lieu of examination in chief, wherein she has reiterated that entire averments made in the plaint. In the decision report AIR 2019 Calcutta Manish Poddar Vs. Perumal Raj. The Hon'ble Court has held that Order 8 Rule 5 of CPC clearly stipulate that any allegation or fact in the plaint if not denied specifically or necessary implication or stated to be not admitted in the pleadings of the defendant shall be taken to be admitted against him.

14. In the present case the defendants have not even contest the suit by filing the written statement or otherwise. So any denial of contention in the plaint cannot or does not arise and same should be taken to be admitted by the defendants. Thus, I conclude that the materials available on record are sufficient conclude that suit schedule property is joint family property of plaintiffs and defendants. Further,

once this Court concludes that the Plaintiffs and Defendants are also coparceners and entitled for share, then, the inevitable conclusion that has to be drawn is that the Plaintiffs and Defendants are each entitled for share. Further it has come in the evidence that parties are belonged to Hindu religion. Thus the provision of the Hindu Succession Act are applicable. Further Section 8 of Hindu Succession Act makes it clear that plaintiffs and defendants are class-1 heirs of Madashetty and Sannamma. Hence, plaintiffs together are entitled for $1/4^{\text{th}}$ share in the of suit schedule property.

Hence, I answered Points No.1 and 2 in the Affirmative.

15. POINT NO.3: In view of the discussions referred to above I proceed to pass the following.

ORDER

The suit of the Plaintiffs for partition and separate possession in respect of suit schedule property is decreed.

The Plaintiffs are entitled for 1/4 share in the suit schedule property.

Having regard to the close relationship of the parties, I direct the parties to bear their own costs.

Draw a Preliminary decree accordingly.

(Dictated to the Stenographer, transcribed and computerized by him, revised and corrected by me, and then pronounced in the open Court on this the 13th Day of February 2024)

(A.N. Kanthamma)
Addl.Civil Judge & JMFC,
Gundlupet.

ANNEXURE

I: LIST OF WITNESSES EXAMINED ON BEHALF OF PLAINTIFF/S:

PW-1 : Smt. Chikkamma

II:LIST OF DOCUMENTS MARKED ON BEHALF OF PLAINTIFF/S:

Ex.P-1 : Copy of the e-swattu katha pertaining to property No.18-507-35/A

Ex.P-2 : Acknowledgment dated 09.05.2022

Ex.P-3 : Genealogical tree affidavit

Ex.P-4 : Certified copy of assessment register extract in respect of property No.448/360

III: LIST OF WITNESSES EXAMINED ON BEHALF OF DEFENDANT/S:

NIL

IV: LIST OF DOCUMENTS MARKED ON BEHALF OF DEFENDANT/S:

NIL

**Addl. Civil Judge & JMFC,
Gundlupet.**