



IN THE COURT OF THE CIVIL JUDGE & JMFC.,
HIREKERUR

PRESENT:- Smt. Nagarathnamma, B.A.L., L.L.B,
Civil Judge and JMFC,
Hirekerur.

O.S. No.290 OF 2021

DATED THIS THE 1st DAY OF SEPTEMBER- 2022

Plaintiff : Rudresha S/o Doddappa Dyavakkalavara,
Age: 44, Occupation : Agriculturist-manager,
R/o Rattihalli, Dist: Haveri.

(By Sri. N.G.B., Adv.)

Defendants: 1. Shivappa S/o Basavanappa Dyavakkalavara,
Age: 65, Occupation : Agriculturist,
R/o Rattihalli, Dist: Haveri.

2. Jayappa S/o Basavanappa Dyavakkalavar,
Age: 63, Occupation : Agriculturist,
R/o Rattihalli, Tq: Rattihalli, Dist: Haveri.

3. Shidlingappa S/o Basavanappa
Dyavakkalavara, Age: 60,
Occupation : Agriculturist, R/o Rattihalli
Tq: Rattihalli, Dist: Haveri.

4. Irappa S/o Basavanappa Dyavakkalavar,
Age: 58, Occupation : Agriculturist,
R/o Rattihalli, Tq: Rattihalli, Dist: Haveri.

5. Manjappa S/o Basavanappa Dyavakkalavar,
Age: 58, Occupation : Agriculturist,
R/o Rattihalli, Tq: Rattihalli, Dist: Haveri.



6. Parameshappa S/o Basavanappa
Dyavakkalavar, Age: 48,
Occupation : Agriculturist, R/o Rattihalli
Tq: Rattihalli, Dist: Haveri.
7. Somappa S/o Basavanappa Dyavakkalavar,
Age: 46, Occupation : Agriculturist,
R/o Yadagoda, Tq: Rattihalli, Dist Haveri.
8. Bharamappa S/o Veerabasappa
Dyavakkalavar, Age: 54, Occupation :
Agriculturist, R/o Rattihalli, Tq: Rattihalli,
Dist: Haveri.
9. Ramesha S/o Veerabasappa Dyavakkalavar,
Age: 44, Occupation : Agriculturist,
R/o Rattihalli, Tq: Rattihalli, Dist: Haveri.
10. Renuka W/o Iranagouda Gubbera,
Age: 52, Occupation : Agriculturist,
R/o Yalavadahalli, Tq: Hirekerur.
11. Kamalamma W/o Prabhu Kadadakatti,
Age: 50, Occupation : Agriculturist,
R/o Tadakanahalli, Tq: Rattihalli.
12. Neelamma W/o Honnappa Chalageri,
Age: 48, Occupation : Agriculturist,
R/o Karura, Tq: Ranebennur.
13. Neelamma W/o Mallikarjuna Karagi,
Age: 46, Occupation : Agriculturist,
R/o Chikkerur, Tq: Hirekerur.

(D. No.1 to 7 by Sri. S.S.P., Adv.)
(D. No.8 to 13 by Sri. B.C.K., Adv.)



Date of Institution of the suit : 09-11-2021

Nature of the suit : Suit for Partition
and Possession

Date of commencement of
Evidence : 09-06-2022

Date of closure of the evidence : 09-06-2022

Date of pronouncement of
Judgment : 01-09-2022

Total duration: : Years Months Days
00 09 23

JUDGMENT

This is a suit filed by the plaintiff against the defendants for partition and separate possession of his father's 1/3rd share in the suit schedule property.

2. The averments of plaint in brief are as follows:-

The case of the plaintiff is that, the original propositus Bharmappa had three sons etc., Basavanneppa, Erabasappa, Doddappa, who is father of the plaintiff, the said propositious Bharamappa is died. Further it is the case of plaintiff is that, defendant No.1 to 7 are the children of Basavanneppa and defendant No.8 to 13 heirs of Erabasappa. The 3rd son of propositus, none other than father of the plaintiff had two children etc., plaintiff and another by name Basavaraju, the



said Basavaraju is died left behind his wife and son by name Prajwal. Therefore, the plaintiff is representing the LRs of Basavaraju, who is no more. Further it is contended that there was a partition effected amongst the children of propositus in respect of some of the joint family property and they have entered into a unregistered partition on 12-06-1975. As per that unregistered partition, they have got effected their names in ME. No. 3181. Ever since then, the children of the propositus were in possession & enjoyment in their shares. Further it is contended by the plaintiff that, at the time aforesaid partition, one property bearing Sy.No.216/2A/2 measuring 11 guntas of land left out from the partition. As such, the plaintiff and defendants were jointly possession and enjoyment in the suit schedule property as co-owners thereof till today by using the said land for trasting floor. As such, since it was not subjected to partition. Further it is contended that suit schedule property was compressed in Sy.No.216/2A/2 measuring 11 guntas. Thereafter, on 07-06-2017 it was renumbered as bearing Sy.No.216/4 measuring 35 guntas. Out of the said property the defendant No.1 to 7 have got effected the 7 guntas 6 quarters of the land in their names on 08-06-2017 in the M.E. No.NT104 without knowledge of the plaintiff & his father. 3 guntas 10 quarters of the suit schedule property got effected in the name of defendant No.8 to 13 in M.E.



No.NT179. As such, name of the plaintiff is left out from the entries made in the revenue records by oversight. Though the names of the defendants are effected in the revenue records plaintiff's 1/3rd share does not effected. Because undisputedly the plaintiff is in possession & enjoyment in the suit schedule property along with the defendants and he is the son of Doddappa. Hence partition took place amongst the defendant No.1 to 13 in respect of suit schedule property does not binding on the share of the plaintiff. Because, plaintiff was not a party in the said partition. As such, when plaintiff was unable to continue the possession as jointly with the defendants, he has demanded for his father's 1/3rd share in the suit schedule property. But the defendants have denied the share of plaintiff by taking undue advantage of entries made in the revenue records in their names. Hence without other option the plaintiff approached this court and filed this present suit for the relief of partition and separate possession of 1/3rd share in the suit schedule property.

3. Pursuant to the suit summons, the defendants No.1 to 13 have appeared through their respective counsels. But they have not filed any written statements and they did not chosen to context to suit of plaintiff.



4. In order to prove his case, the plaintiff has got examined himself of PW.1 and got marked the documents as Ex.P1 to 5 and closed his side. In spite of sufficient time has been given to the defendants they did not come forward to challenge the case of plaintiff.

5. Heard arguments both of the learned counsels for plaintiff & defendants and perused the entire records and facts & circumstances of the case.

6. In view of the above pleadings of the plaintiff and evidence brought on record, the following point would arise for my consideration;

1. **Whether the plaintiff prove that the suit schedule properties are the ancestral and joint family properties of plaintiff and defendants?**
2. **Whether the plaintiff prove that he and defendants are the members of the joint Family?**
3. **Whether the plaintiff is entitled for 1/3rd share of his father in the suit schedule property?**
4. **What order or decree?**

7. Heard the arguments of counsel for both the side. Now, findings of this court to the above points are as follows:

Point No.1 : In the Affirmative
Point No.2 : In the Affirmative



Point No.3 : In the Affirmative
Point No.4 : As per the final order
for the following.

REASONS

8. Points No.1 to 3:- These points are inter-linked with each other, hence they are taken together for discussion in order to avoid repetition of facts and circumstances.

As could be seen from the pleadings of the plaint that, one propositus Bharamappa had three children as Basavanneppa, Erabasappa and Doddappa. The said propositus is died. The defendant No.1 to 7 are children of the 1st son of Bharamappa. Defendant No.8 to 13 heirs of 2nd son Erabasappa. The plaintiff and another by name Basavaraju who died left behind his wife and son are children of 3rd son of propositus Bharamappa. There was a partial partition effected amongst the children of propositus Bharamappa in respect of joint family properties by virtue of unregistered partition. At that time, the suit schedule property bearing Sy.No.216/4 11 guntas of the land, which was using for the purpose of trasting floor by the both plaintiff & defendants is left out from the partition. As such, the plaintiff and defendants were in the joint possession & enjoyment of suit schedule property as co-owners thereof till today. But only the names of defendant No.1 to 7 have got



effected in the revenue records in respect of 7 guntas 6 quarters of the suit schedule property and 3 guntas 10 quarters of the suit schedule property has got effected in the names of defendant No.8 to 13 by oversight. As such the name of the plaintiff is left by oversight. Undisputedly the plaintiff is in possession and enjoyment with the defendants as co-owners, as he was unable to continue the peaceful possession & enjoyment with the defendants he has demanded for his father's 1/3rd share in the suit schedule property. But the defendants have clearly denied the share of the plaintiff by taking undue advantage of entries made in the revenue records in their names by oversight. Hence the said entries made in the revenue records does not binding on the share of plaintiff's father in the suit schedule property. It is specifically contended that, the plaintiff has requested the defendants to partition in respect of the suit schedule property. But the defendants has denied to effect the partition. Hence the plaintiff has filed the present suit seeking for relief of partition & separate possession of 1/3rd share of his father in the suit schedule property.

9. In order to establish his case, the plaintiff got examined himself as PW.1 by submitting affidavit in lieu of examination-in-chief, wherein he reiterated the averments made in the plaint. In support of his evidence, the plaintiff has produced the 5 documents and got marked the same as



Ex.P1 to P5. Ex.P1 right of records pertaining to suit schedule property bearing Sy.No.216/4, Ex.P2 to 4 are mutation registers in respect of M.E. No.318, TT104 & H112 and H179 respectively. On other hand though this court has given sufficient time to the defendants, they did not chosen to contested the suit of plaintiff.

10. Having heard of the arguments on both sides and perusal of the entire records placed on record. It is noted that the plaintiff has filed the present suit for relief of partition and separate possession his father 1/3rd share in the suit schedule property. Further he contended that, one propositus Bharmappa had three children as Basavanneppa, Erabasappa and Doddappa. There was a partial partition between the children of the propositus Bharamappa in the joint family properties by virtue of unregistered partition. As such same is effected in the names of children of the Bharammappa in M.E. No.3181. As such they were in peaceful possession & enjoyment in their shares. At the time of partition took place between the children of propositus Bharamappa the suit schedule property has been left for partition as the plaintiff and defendants were in jointly possession & enjoyment in the suit schedule property as a co-owners thereof till today. But by oversight in respect of suit schedule property 7 guntas 6 quarters of the land has been entered in the names of defendant No.1 to 7 in the



revenue records. 3 guntas 10 quarters of the land has been entered in the names of defendant No.8 to 13 in the revenue records. As such though the plaintiff has entitled to 1/3rd share of his father in the suit schedule property his name is not effected in the revenue records. When the plaintiff was unable to continue his joint possession & enjoyment along with the defendants he demanded for his father 1/3rd share in the suit schedule property. But the defendants by taking undue advantage of entries made in the revenue records have denied the share of the plaintiff. Therefore without no option the plaintiff had filed the present case as he is entitled for 1/3rd share of his father in the suit schedule property.

11. On perusal of the pleadings and entire material placed on record, it is noted that actual owner of the suit schedule property is propositus Bharmappa. It is clear from the genealogy tree, which produced by the plaintiff along with the plaint, the propositus Bharmappa had three sons etc., as Basavanneppa, Erabasappa and Doddappa the father of the plaintiff and he is no more. On perusal of the Ex.P1 it is clear that the names of the defendant No.1 to 13 have got effected in the revenue records as the defendant No.1 to 7 are joint owners of the land measuring 7 guntas 6 quarters and the defendant No.8 to 13 are joint owners of the land measuring 3 guntas 10 quarters in the suit schedule property as alleged by the plaintiff in the plaint. On perusal of the Ex.P2 it is



clear that the children of the propositus Bharamappa have got effected the partition for some of the joint family property by virtue of unregistered partition. At the time of said such partition the suit schedule property bearing Sy.No.216/2A/2 which is renumbered now as Sy.No.216/4 has been left for partition as plaintiff & defendants were in joint possession & enjoyment of the suit schedule property as co-owners thereof till today by using for trasting floor. On perusal of the Ex.P3 mutation register in respect of M.E. No.T104 it is clearly goes to shows that the previous Sy.No.216/2A/2 is renumbered as Sy.No.216/4 and reunited the property for about 35 guntas as pleaded by the plaintiff. On perusal of the Ex.P2 to 5 the names of the defendants are reflected in the mutation register as they are joint owners of the suit schedule property as pleaded by the plaint.

12. On careful perusal of Ex.P1 & 4 RTC & mutation registers clearly goes to shows that defendant No.1 to 7 are joint owners of the suit schedule property pertaining 7 guntas 6 quarters. In this regarding the plaintiff is contended that there is no partition between plaintiff & defendants in respect of suit schedule property and by oversight entries have been made in the revenue records. Therefore, the said entries are not binding on the share of father of the plaintiff. Since, plaintiff & defendants are being a members of joint family of propositus Bharamappa and they are in joint



possession & enjoyment of suit schedule property. It is not disputed by the defendants.

13. Further it is relevant to note that the plaintiff has stated in his affidavit that suit schedule property is ancestral property. Since it is not subjected to partition between the plaintiff & defendants and they are jointly possession & enjoyment in the suit schedule property as co-owners thereof till today. Further it is stated that at the time of partition amongst the children of the propositus Bharamappa the suit schedule property has left for the purpose of trasting floor and it has been used by plaintiff & defendants in jointly as co-owners thereof. These contentions of the plaintiff is not disputed by the defendants. Further the plaintiff stated that, when the suit schedule property is left for partition, it is liable to be partition and he is entitled together with the LRs of Basavaraju for 1/3rd share of his father as he is representing the LRs of Basavaraju, who died left behind his wife & son. It is also not disputed by the defendants.

14. Further it is relavent to note that the plaintiff has clearly pleaded in the plaint & stated in his affidavit that he is the son of Doddappa, who 3rd son of propositus Bharamappa. As such he is a member of joint family of propositus Bharamappa is not disputed by the defendants. When such being the case, suit schedule property, which



actual belongs to propositus Bharamappa is liable to be divided to his three children of Bharamappa by names Basavanneppa, Erabasappa & Doddappa. Defendant No.1 to 7 are representing the Basavanneppa & defendant No.8 to 13 are representing Erabasappa and plaintiff is representing the Doddappa. At the same time there is no contrary evidence by the defendants to disbelieve the case of the plaintiff.

15. It is pertinent to state that materials available on record goes to shows that the suit schedule property has left out from the partition which held between the fathers of the plaintiff & defendants, those who are children of propositus Bharamappa and plaintiff & defendants are undisputedly in the possession & enjoyment of suit schedule property as co-owners till today and by oversight the only names of the defendants are entered in the revenue records by left the name of plaintiff. Though he is entitled to 1/3rd share of his father in the suit schedule property his name not effected in the revenue records pertaining to Sy.No.216/4. Hence he has demanded for 1/3rd share of his father in suit schedule property by taking undue advantage of entries made in the revenue records the defendants have denied the 1/3rd share of plaintiff's father. So suit schedule property is liable for partition. As already discussed supra father of the plaintiff, brother of the plaintiff are no more. Hence being the LR's of



Doddappa, who representing the wife & son of Basavaraju who entitled to get with LRs of Basavaraju to 1/3rd share of his father in the suit schedule property. Defendant No.1 to 7 are together with entitled with 1/3rd share of Basavanneppa in the suit schedule property. Defendant No.8 to 13 those who are representing the 2nd son of the propositus Bharamappa are together entitled for 1/3rd share of Erabasappa in the suit schedule property. In view of above said discussion I have answered point No.1 to 3 in the Affirmative.

16. Point No.4:- In view of the aforesaid findings on Points No.1 to 3, this court proceed to pass following;

ORDER

The suit of the plaintiff is hereby decreed.

The plaintiff is entitled to 1/3rd share of his father Doddappa in the suit schedule property.

The defendants No.1 to 7 together are entitled to 1/3rd share of Basavanneppa in the suit schedule property.

The defendant No.8 to 13 together are entitled to 1/3rd



**share of Erabasappa in the suit
schedule property.**

**Having regard to the
relationship of the parties, there is
no order as to costs.**

**Draw preliminary decree
accordingly.**

(Dictated to the Stenographer typed by him, corrected and then
pronounced by me in the open court on this the **1st day of September- 2022**)

**(Smt. Nagarathnamma)
Civil Judge & JMFC.,
Hirekerur.**

ANNEXURE

LIST OF WITNESSES EXAMINED ON BEHALF OF THE PLAINTIFF:-

PW-1 : Rudresh S/o Doddappa Dyvakkalavara

LIST OF DOCUMENTS EXHIBITED ON BEHALF OF THE PLAINTIFFS:-

Ex.P1 : Records of rights.

Ex.P2 : Mutation register.

Ex.P3 to 5: Mutation registers.

LIST OF WITNESSES EXAMINED ON BEHALF OF THE DEFENDANTS:-

-Nil-

LIST OF DOCUMENTS EXHIBITED ON BEHALF OF THE DEFENDANTS:-

-Nil-

**(Smt. Nagarathnamma)
Civil Judge & JMFC.,
Hirekerur.**



(Judgment pronounced in the open court vide separate Judgment)

ORDER

The suit of the plaintiff is hereby decreed.

The plaintiff is entitled to 1/3rd share of his father Doddappa in the suit schedule property.

The defendants No.1 to 7 together are entitled to 1/3rd share of Basavanneppa in the suit schedule property.

The defendant No.8 to 13 together are entitled to 1/3rd share of Erabasappa in the suit schedule property.

Having regard to the relationship of the parties, there is no order as to costs.

Draw preliminary decree accordingly.

**Civil Judge & JMFC.,
Hirekerur**