

Govt. of Karnataka

TITLE SHEET IN SUITS

Form No.9
(Civil Title sheet for
judgment in Suits
K.P.91)

**IN THE COURT OF THE PRL. CIVIL JUDGE 1ST ADDL.
JMFC., RANEBENNUR.**

Present : **Sri. P. Shivaraj,**
B.Com.LL.B.
Prl. Civil Judge & 1st Addl. JMFC.,
Ranebennur.

Dated this the 12th day of April – 2018

O S No.286/2015

- Plaintiffs :**
1. Parashuram S/o late Sadashivappa, Age: 44 yrs, Occ: Foundry work, Siddivinayaka Foundry.
 2. Nagaraj S/o late Sadashivappa, Age: 35 yrs, Occ: Lakki Star Office, Cable Operator.
 3. Junjappa S/o Late Sadashivappa, Age: 33 yrs, Occ: 28 yrs, Occ: Welding work.
 4. Yallappa S/o late Sadashivappa, Age: 28 yrs, Occ; Coolie.
- Pltf Nos. 1 to 4 are residents of Kodiyaal Hospete, Tq: Ranebennur.

(Pleader by Sri.Hanumanthappa V.D)

// Vs //

- Defendants:**
1. Basavarajappa S/o late chikkappa Asundi @ Eranna Hosamani, Age: 50 yrs, Occ: Welding work, Tyavanige village, Tq: Channagiri, Dist: Davangere.
 2. Smt. Sudha W/o Basavarajappa, Age: 35 yrs, Occ: Cooking work at anganavadi center, R/o: Tyavanige village, Tq: Channageri, Dist: Davangere.

3. Karibasappa S/o late Chikkappa Asundi @ Eranna Hosamani, Age: 55 yrs, Occ: Water Service man.
4. Chandrappa S/o late Chikkappa Asundi @ Eranna Hosamani, Age: 32 yrs, Occ; Gaden work, Davangere, R/o: Kodiyal Hospete, Tq: Ranebennur, Dist: Haveri.

(Pleader by Sri.G.B.Yalagachch)

Date of institution of suit	: 17-11-2015
Nature of suit	: Partition and separate possession
Date of commencement of recording of evidence	: 19-11-2016
Date on which the Judgment was pronounced	: 12-04-2018
Total Duration	: Year/s Month/s Day/s -02- -04- -25-

(P. Shivaraj)

Prl. C.J. & 1st Addl.JMFC.,
Ranebennur.

J U D G M E N T

Plaintiffs have filed this suit for partition and separate possession of their respective shares in the suit schedule properties.

2. Plaintiffs case is as follows:

One late Channabasappa Erannanavar is the family propositior and he is having three male childrens i.e., late Chikkappa, late Erappa and late Sadashivappa.

Plaintiffs are the childrens of late Sadashivappa, defendant Nos.1 and 2 are the childrens of late Chikkappa, defendant Nos. 3 and 4 are the childrens of late Erappa.

Gangamma is the mother of defendant Nos. 1 and 2 and wife of late Chikkappa.

Mallamma is the mother of defendant Nos. 3 and 4 and wife of Erappa.

Gouramma is the mother of plaintiffs and wife of late Sadashivappa.

Plaintiffs and defendants constituted the joint Hindu family, suit schedule properties are their joint family properties and they are in joint possession and enjoyment of the same. In the year 1988-89, oral partition was effected in between late Chikkappa and late Erappa only, by excluding the father of plaintiffs i.e., late Sadashivappa.

Late Chikkappa and late Erappa were the employees of Kirloskar company at Harihar and plaintiffs father was the illiterate. They have mutated the revenue records on the basis of oral partition without the knowledge and consent of plaintiffs father. Inasmuch, plaintiffs requested the defendants to effect the

partition, but they have failed to effect the same. Hence, plaintiffs have come up with this suit.

3. After the institution of the suit, summons was served to the defendants, defendants appeared through their counsel, filed their vakalath and statement of defence.

Defendants denied the plaintiffs case. They contended that, suit schedule properties are in exclusive possession of defendant Nos.3 and 4. They contended that, six daughters of late Chikkappa i.e., Sharada, Hoovakka, Mahadevakka, Karabasamma, Channamma and Rathnamma and three daughters of late Erappa i.e., Nagamma, Renuka and Jayamma have not shown in the genealogical tree. Further, the aforesaid persons are the proper and necessary parties for fair and complete adjudication of the case and suit is bad for non joinder of necessary parties and prays this court to dismiss the suit.

4. On the basis of the above pleadings, I have framed the following:

ISSUES

- 1. Whether the plaintiffs prove that, plaintiffs and defendants constituted Hindu undivided joint family and suit schedule property is their joint family property and they are in joint possession and enjoyment of the same as alleged in the plaint?**

- 2. Whether defendants prove that, suit schedule property is the self-acquired property of their father?**
- 3. Whether defendants prove that, suit is bad for non-joinder of necessary parties?**
- 4. Whether plaintiff is entitled for relief sought for?**
- 5. What order or decree?**

5. In order to prove the case, 1st plaintiff examined himself as PW.1, produced and marked 6 documents, which are at Ex.P.1 to 6. Defendants doesn't choose to cross-examine the PW1. Accordingly, cross of PW1 is taken as nil on 09-02-2016. Defendants doesn't choose to lead their evidence. Hence, defendant evidence is taken as nil.

6. I have heard the arguments and perused the materials available on record.

7. On the basis of the oral and documentary evidence and arguments, my answer to the aforesaid issues are as follows:

Issue No.1 & 2 : In the affirmative
Issue No.3 : In the affirmative
Issue No.4 : Answered accordingly
Issue No.5 : As per final order, for the following:

REASONS

8. Issue Nos.1 & 2:- I have taken both these issues together for common discussion, so as to avoid repetition of facts and reasonings.

PW.1 being the 1st plaintiff, he reiterated the plaint averments, in his examination-in-chief. Defendants have not disputed the fact that, suit schedule properties are their ancestral properties in the hands of the childrens of late Channabasappa Erannanavar.

9. Ex.P1 and 2 are the demand register extracts in respect of the suit schedule properties, wherein the extent of the properties is shown and tally's with the plaintiffs version. Plaintiffs have not tendered any documents, to show the boundaries of the suit schedule properties as pleaded by them.

On the other hand, defendants doesn't choose to establish their contention that, defendant nos.3 and 4 are in exclusive possession of the suit schedule properties, as contended in their written statement. Inasmuch, the said contention can't be believed in all angles.

No doubt, it is the settled principle of law that, a Hindu family is presumed to be joint until and unless the contrary is established/proved. Hence with the aforesaid discussion, and by considering the materials available on record, I am of the opinion that, plaintiffs have established these issues in their favour. Accordingly, I am answering these issues **in the affirmative**.

10. Issue No.3:- Defendants specifically pleaded that, six daughters of late Chikkappa i.e., Sharada, Hoovakka, Mahadevakka, Karabasamma, Channamma and Rathnamma and three daughters of late Erappa i.e., Nagamma, Renuka and Jayamma are the necessary parties and they are not included in this suit. No doubt, defendants have not put-forth the full details and correct address and the present status of the daughters of late Chikkappa and late Erappa. They have not tendered any genealogical tree, so as to establish the aforesaid contention.

On the other hand, plaintiffs have not disputed nor denied the aforesaid contention, so as to disbelieve the same. Accordingly, I am of the opinion that daughters of late Chikkappa and Erappa are the necessary parties. Hence, with the aforesaid discussion, I am answering this issue **in the affirmative**.

11. Issue No.4:- While answering issue Nos.1 and 2, it is discussed in detail and I have come to the conclusion that, suit schedule properties are their ancestral and joint family properties in the hands of plaintiffs father and late Chikkappa and late Erappa. Inasmuch, suit schedule properties shall devolve equally in between and among the childrens of late Chikkappa Erannanavar.

Accordingly, late Chikkappa, late Erappa and late Sadashivappa i.e., father of the plaintiffs are entitle for 1/3rd share each in the suit schedule properties.

Plaintiffs being the childrens of late Shivanandappa, they together entitled for 1/3rd share in the suit schedule properties.

Defendant Nos.1 and 2 are entitle for their respective shares and six daughters of late Chikkappa are entitle for notional partition i.e., in 1/3rd share belongs to their father in the suit schedule properties.

Defendant Nos. 3 and 4 are entitle for their respective shares and three daughters of late Erappa are entitle for notional partition i.e., in 1/3rd share belongs to their father in the suit schedule properties.

The daughters of late Chikkappa i.e., Sharada, Hoovakka, Mahadevakka, Karabasamma, Channamma and Rathnamma are entitled for their respective shares, subject to the proof that, they are the daughters of late Chikkappa and Gangamma.

The three daughters of late Erappa i.e., Nagamma, Renuka and Jayamma are entitled for their respective shares, subject to the proof that, they are the daughters of late Erappa and Mallamma. Hence, with the aforesaid discussion, I am answering this issue **accordingly.**

10. Issue No.5:- Admittedly, parties herein being the members of a joint family, no cost is imposed on them, to maintain cordial and healthy relationship between them.

In view of the reasons and discussion made above, I proceed to pass the following;

ORDER

Suit of the plaintiffs is decreed.

1/3rd share of late Chikkappa and 1/3rd share of late Erappa are kept intact and their childrens are entitle for their respective shares, subject to the proof of their relationships with the deceased Chikkappa and Erappa.

Parties have to bear their own cost of litigation.

Draw decree accordingly.

(Dictated to the stenographer, transcribed and computerized by her, and then corrected, signed and pronounced by me in the open court, on this **12th day of April- 2018**).

(P. Shivaraj)
Prl. C.J. & Ist Addl.JMFC.,
Ranebennur.

A N N E X U R E**Witnesses examined on behalf of the plaintiffs :**

PW.1 : Parashuram Sadashivappa

Documents exhibited on behalf of the plaintiffs :

Ex.P.1 & 2 : Assessment extracts

Ex.P.3 : Death certificate

Ex.P.4 & 5 : Assessment extracts

Ex.P.6 : MR extract

Witnesses examined & documents exhibited on behalf of the defendants:

.....nil.....

**Prl. C.J. & 1st Addl.JMFC.,
Ranebennur.**

(Judgment pronounced in the open court vide separate)

ORDER

Suit of the plaintiffs is decreed.

1/3rd share of late Chikkappa and 1/3rd share of late Erappa are kept intact and their childrens entitle for their respective shares, subject to the proof of their relationships with the deceased Chikkappa and Erappa.

Parties have to bear their own cost of litigation.

Draw decree accordingly.

**Prl.C.J. & 1st Addl.JMFC.,
Ranebennur.**

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$$\frac{8+1}{72}$$

$$\frac{9}{72} = \frac{1}{8}$$

