

**IN THE COURT OF THE CIVIL JUDGE AND JUDICIAL  
MAGISTRATE FIRST CLASS, SAVANUR.**

Present: **Sri. Raghavendra R,**  
**B.A.L, LL.B.**  
Civil Judge and JMFC.,  
Savanur.

**Dated this the 7<sup>th</sup> day of March, 2015**

**ORIGINAL SUIT NO .129/2010**

- PLAINTIFFS;**
1. Smt. Chandravva  
W/o Govindappa Lamani,  
Age: 52 years, Occ: Household,  
R/o: Goudageri, Taluka: Kundgol,  
District: Dharwad.
  2. Smt. Sangavva  
W/o Fakkirappa Lamani,  
Age: 48 years, Occ: House work,  
R/o: Bevinahalli, Taluka: Savanur,  
District: Haveri.
  3. Smt. Neelavva  
W/o Mahadevappa alias  
Manappa Lamani, Age: 42 years,  
Occ: House work, R/o Bevinahalli,  
Taluka: Savanur, District: Haveri.
  4. Shri. Channappa  
S/o Lakkappa Lamani,  
Age: 70 years, Occ: Agriculture,  
R/o: Akkigunda, Taluka: Shirahatti,  
District: Gadag.
  5. Krishnappa  
S/o Channappa Lamani,  
Age: 45 years, Occ: Cooli,  
R/o: Akkigunda, Taluka: Shirahatti,  
District: Gadag.
  - 6.

Nagavva  
W/o Ramachandra Lamani,  
Age: 43 years, Occ: House work,  
R/o: Akkigunad, Taluka: Shirahatti,  
District: Gadag.

7. Dharmappa  
S/o Channappa Lamani,  
Age: 40 years, Occ: Agriculture,  
R/o: Akkigund, Taluka: Shirahatti,  
District: Gadag.
8. Smt. Puttavva  
W/o Ningappa Lamani,  
Age: 38 years, Occ: Household,  
R/o: Undalli, Taluka: Shirahatti,  
District: Gadag.

**(By Sri. N.S. Patil, Adv.)**

Vs

- DEFENDANTS:**
1. Smt. Gangavva  
W/o Balappa Chikkawad,  
Age: 75 years, Occ: House work,  
R/o: Shirabadagi, Taluka: Savanur,  
District: Haveri.
  2. Smt. Hiravva W/o Mallappa Lamani,  
Age: 42 years, Occ: Household,  
R/o: Bevinahalli, Taluka: Savanur,  
District: Haveri.
  3. Smt. Nagavva D/o Mallappa Lamani,  
Age: 26 years, Occ: Household,  
R/o: Bevinahalli, Taluka: Savanur,  
District: Haveri.
  4. Mahadevappa S/o Mallappa Lamani,  
Age: 24 years, Occ: Agriculture,  
R/o: Bevinahalli, Taluka: Savanur,

District: Haveri.

5. Smt. Mallavva @ Malavva  
D/o Mallappa Lamani,  
Age: 21 years, Occ: Household,  
R/o: Bevinahalli, Taluka: Savanur.
6. Santosh S/o Mallappa Lamani,  
Age: 20 years, Occ: Agriculture,  
R/o: Bevinahalli, Taluka: Savanur,  
District: Haveri.

**(By Sri. S.A. Kamaraddi, Adv.)**

Date of institution of suit	: 24-04-2010
Nature of suit	: Suit for partition and separate possession.
Date of commencement of recording of evidence	: 31-05-2014
Date of pronouncement of Judgment.	: 07-03-2015
Total duration	Year/s    Month/s    Day/s -04-        -10-        -11-

### **J U D G M E N T**

The plaintiffs have filed this suit against the defendants for the relief of partition and separate possession.

2. The brief facts of the plaintiffs' case are that the agricultural land bearing R.S.No.23/C measuring 9 acres 09 guntas assessed at Rs.12.38 Ps situated at Bevinahalli village in Savanur taluka which is bounded to the East by the land of Yamanappa Lamani, to the West by the property of Neelappa Lamani, to the North by the property of Devalavva Lamani and

to the South by the property of Karimsab Hondadakatti and another agricultural land bearing R.S.No.27/4 measuring 4 acres 36 guntas assessed at Rs.1.67 Ps situated at Bevinahalli village in Savanur taluka which is bounded to the East by the property of Gafarsab Dalal, to the West by the government property, to the North by the government road and to the South by the property of Bhajaneppa Lamani are the suit properties in this suit.

3. The propositous Somappa S/o Fakkirappa Lamani and his wife Smt. Lachhavva died long back leaving behind them the plaintiffs and defendants as their legal heirs. The propositous have given birth to five daughters and one son. In this, the plaintiffs No.1 to 3, defendant No.1 and deceased Paravva are the daughters of the propositous Somappa and deceased son by name Mallappa was only one son to the propositous Somappa. Smt. Paravva died long back leaving behind her plaintiffs No.4 to 8 as her legal heirs. Said Mallappa died long back leaving behind him defendants No.2 to 6 as his legal heirs. Hence, the plaintiffs and defendants are the joint family members. After the death of propositous, the names of the plaintiffs and defendants jointly entered in the Revenue records of the suit properties. Hence, the suit properties are the ancestral and joint family properties of the plaintiffs and defendants and they are jointly cultivating the suit properties till today. Therefore, the plaintiffs and defendants are the joint owners and in joint possession and

enjoyment of the suit properties till today. Even till today, the plaintiffs and defendants are jointly in possession of the properties as joint owners thereof.

4. It is submitted that there is/was no partition took place between the plaintiffs and defendants in respect of the suit properties. So, the plaintiffs and defendants have got their legitimate share in the suit properties. The plaintiffs No.1 to 3, defendant No.1 and deceased Paravva and Shri Mallappa have got  $1/6^{\text{th}}$  share each in the suit properties. Hence, the plaintiffs No.4 to 8 are entitled for the share of the deceased Paravva and defendants No.2 to 6 are inherited the share of the deceased Mallappa. Therefore, the plaintiffs and defendants have got their respective  $1/6^{\text{th}}$  share each in the suit properties.

5. It is further submitted that the plaintiffs have recently i.e., about 15 days back, the plaintiffs asked the defendants to effect the partition and give their  $1/6^{\text{th}}$  separate share in the suit properties by metes and bounds, but the defendants have stoutly denied to effect partition in the suit properties. Then, the matter went upto the elders of the society, but the defendants flatly refused to effect partition in the suit properties. Now, the plaintiffs want to get their share in the suit properties amicably and finally. But the defendants are not co-operating to make the partition and intentionally postponing to given the legal share of the plaintiffs. The plaintiffs are unable to continue in joint possession with the

defendants and therefore, the plaintiffs have constrained to file this suit. On these main grounds, the plaintiffs have prayed for decreeing the suit with costs.

6. After receipt of suit summonses to the defendants, the defendants have appeared through their counsel and the defendant No.4 has filed the detailed written statement by denying all the contents of the plaint. The defendant No.4 has submitted that originally the suit properties were belonging to one Fakkirappa S/o Jatreppa Lamani who is not the ancestor of the plaintiffs and defendants. The said Fakkirappa had very much love and affection towards Mallappa i.e., the father of the defendants No.3 and 6 and husband of the defendant No.2. The said Mallappa was residing with the said Fakkirappa. Thus, the said Fakkirappa was treating Mallappa as his son. The said Fakkirappa is not the ancestor of the plaintiffs and defendants. The father of the plaintiffs No.1 to 3 i.e., Somappa @ Somaleppa had no ancestral or self-acquired properties. The said Somappa was doing coolie and performed the marriage of his two daughters by name Gangavva and Neelavva i.e., plaintiff No.3. After death of said Somappa, there was no income to the family and therefore, the defendant No.1 and her husband Balappa performed the marriage of the plaintiff No.2 and deceased Paravva. The suit properties were at no point of time were belonging to Somappa. The said Mallappa i.e., father of the defendants No.3 to 5 was residing with his guardian (adopted father)

Fakkirappa. The said Fakkirappa during his lifetime, got entered the name of Mallappa to the suit properties.

7. Accordingly, the said Mallappa has become the absolute owner of the suit properties by acquiring the rights in the property from one Fakkirappa who is not the ancestor of the plaintiffs and defendants. Thus, the suit properties are not the ancestral properties of the plaintiffs and defendant No.1. Therefore, the plaintiffs and defendant No.1 have no right over the suit properties. The said Mallappa died about 6 years back leaving behind him his wife i.e., defendant No.1 and two sons and two daughters i.e., defendants No.3 to 6 as his only Class-I legal heirs. The plaintiff and defendant No.1 are the Class-II heirs of the deceased Mallappa. As per the Hindu Law, the Class-I heirs i.e., defendants No.2 to 6 of the deceased Mallappa are excludes the Class-II heirs i.e., plaintiff and defendant No.1 from inheriting or succeeding the interest of the deceased Mallappa. Thus, the plaintiffs and defendant No.1 are not entitled for any share in the suit properties. It is appears that after the death of said Mallappa, the plaintiff colluding with the Revenue Officers got entered their names to the suit properties stating that they are the legal heirs of the deceased Mallappa. No notice has been issued to the defendants No.2 to 6 before entering the name of the plaintiff and defendant No.1 to the suit properties. Therefore, the entering the name of the plaintiff and defendant No.1 to the suit properties as legal heirs of the deceased Mallappa is

contrary to the law and null and void. The plaintiff by such illegal entry will not acquire any right over the suit property. Therefore, the suit filed by the plaintiff on such illegal entry in the record of rights of the suit properties is not maintainable. The names of the plaintiffs are not entered as legal heirs of propositous Somappa, but entered their names as legal heirs of Mallappa.

8. It is submitted that the propositous Somappa and his wife died about 50 years back without leaving any properties behind them. Therefore, the question of inheriting or succeeding the properties from Somappa does not arise at all. If there is any properties of Somappa at the time of death of Somappa, then the plaintiffs have not acquired any right in the properties of Somappa as per the Hindu Law in force on the death of Somappa Lamani. The son of the plaintiff No.2 i.e., Nagappa is the husband of the defendant No.2. The said Nagappa ill-treated the defendant No.3 and his son and ousted them from his house. The defendants requested to Nagappa to lead married life with the defendant No.3. The son of the plaintiff No.2 without heeding to the request of the defendants, undergone a second marriage with one Premavva of Kabbur village. The son of the plaintiff No.2 with an intention to harass the defendants. On these main grounds, the defendant No.4 has prayed for dismissing the suit with compensatory costs.

9. I have heard arguments of both the parties' counsels and perused the materials on record.

10. On the basis of the pleadings on record, the court has framed the following issues for determining the rights of the parties as well as to disposal of the suit.

- **Issue No.1:** Whether the plaintiffs prove that the suit properties are the joint family properties as on the date of this suit?
- **Issue No.2:** Whether the plaintiffs prove that they have each 1/6<sup>th</sup> share in the suit properties?
- **Issue No.3:** Whether the defendants prove that the suit properties are not the ancestral properties of the plaintiffs and the defendants?
- **Issue No.4:** Whether the defendants prove that the plaintiffs have illegally got their names entered in the revenue records of the suit properties claiming to be legal heirs of the deceased Mallappa?
- **Issue No.5:** Whether the court fee paid is sufficient?

- **Issue No.6:** Whether the plaintiffs are entitled for the relief as prayed for?
- **Issue No.7:** What order or decree?

11. In order to prove the above issues, the plaintiff No.3 has entered into witness box and examined herself as Pw1 and got marked documents as Ex.P1 to 8. The defendant No.4 has entered into witness box and examined himself as Dw1 and got marked documents as Ex.D1 to 7.

12. I have heard the arguments from both the sides and perused the documents on record.

- |             |                                       |
|-------------|---------------------------------------|
| Issue No.1: | In the negatively.                    |
| Issue No.2: | In the negatively.                    |
| Issue No.3: | In the affirmatively.                 |
| Issue No.4: | In the affirmatively.                 |
| Issue No.5: | In the affirmatively.                 |
| Issue No.6: | In the negatively.                    |
| Issue No.7: | As per final order for the following; |

### **REASONS**

**13. Issues No.1 and 3:** These issues are inter-linked to each other, as such, I considered these issues together, to avoid repetition of facts of the case and also for common discussion. As I stated above to prove their case and defense, in order to prove the above issues, the plaintiff No.3 has entered into witness box and examined herself as Pw1 and got marked

documents as Ex.P1 to 8. The defendant No.4 has entered into witness box and examined himself as Dw1 and got marked documents as Ex.D1 to 7. The details of the exhibits are given in the Annexure of this judgment.

14. The Pw1 has reiterated the facts of the case in her chief examination affidavit. The Pw1 produced in all 8 documents in the list i.e., Ex.P1 to 8. The same witness has deposed in the cross-examination that “ನನಗೆ ನಾಲ್ಕು ಮಂದಿ ಮಕ್ಕಳು ಎಂದರೆ ಸರಿ. ನನ್ನ ದೊಡ್ಡ ಮಗನಿಗೆ 30 ವರ್ಷ ವಯಸ್ಸಾಗಿರುತ್ತದೆ. ನಾನು ನನ್ನ ಮಗನಿಗಿಂತ 49 ವರ್ಷದೊಡ್ಡವಳಾಗಿರುತ್ತೇನೆ. ಗಂಗವ್ವಳಿಗಿಂತ ಉಳಿದ ಸಹೋದರಿಯವರು ಒಂದು ಒಂದು ವರ್ಷ ಚಿಕ್ಕವರಾಗಿರುತ್ತಾರೆ ಎಂದರೆ ಸರಿ. ನಾನು ವಾದಪತ್ರದಲ್ಲಿ 1ನೆ ಪ್ರತಿವಾದಿಯ ವಯಸ್ಸು 75 ಎಂದು ಬರೆಸಿರುವುದು ಸರಿ ಇರುತ್ತದೆ. 1ನೆ ವಾದಿಯು ಪಾರವ್ವಳಿಗಿಂತ ಒಂದು ವರ್ಷ ಚಿಕ್ಕವಳಾಗಿರುತ್ತಾಳೆ. 4 ರಿಂದ 8 ನೆ ವಾದಿಯರ ತಾಯಿ 1ನೆ ಪ್ರತಿವಾದಿಗಿಂತ ಒಂದು ವರ್ಷ ಚಿಕ್ಕವರಾಗಿರುತ್ತಾರೆ ಎಂದರೆ ಸರಿ. 1ನೆ ವಾದಿಯು 1ನೆ ಪ್ರತಿವಾದಿಗಿಂತ 2 ವರ್ಷ ಚಿಕ್ಕವರು ಎಂದರೆ ಸರಿ. 2ನೇ ವಾದಿಯು 1ನೆ ವಾದಿಗಿಂತ 2 ವರ್ಷ ಚಿಕ್ಕವಳಾಗಿರುತ್ತಾರೆ ಎಂದರೆ ಸರಿ. 2ನೆ ವಾದಿಯ ನಂತರ 3 ರಿಂದ 6ನೆ ಪ್ರತಿವಾದಿಯರ ತಂದೆ ಹುಟ್ಟಿರುತ್ತಾರೆ. ಅವರ ನಂತರ ನಾನು ಹುಟ್ಟಿರುತ್ತೇನೆ. ನಾನು ಎಲ್ಲರಿಗಿಂತ ಚಿಕ್ಕವಳಾಗಿರುತ್ತೇನೆ. ನಾನು 2ನೆ ವಾದಿಗಿಂತ 3 ವರ್ಷ ಚಿಕ್ಕವಳಾಗಿರುತ್ತೇನೆ. ನಾನು ನನ್ನ ಮತ್ತು ನನ್ನ ಸಹೋದರಿಯರ ಜನ್ಮ ದಿನಾಂಕ ತೋರಿಸಲು ಯಾವುದೇ ದಾಖಲೆ ಹಾಜರು ಪಡಿಸಿಲ್ಲ. ನಾನು ನನ್ನ ವಕೀಲರಿಗೆ ಪಕ್ಷಗಾರರ ಹೆಸರನ್ನು ಹೇಳಿ ಬರೆಸಿಲ್ಲ. ದಾವಾ ಸರ್ವೆ ನಂಬರ ಗೊತ್ತಿರುತ್ತದೆ. ಅದರ ನಂಬರ 27, 23 ಆಗಿರುತ್ತದೆ. ಇವುಗಳ ಚಿಕ್ಕುಬಂದಿ ಗೊತ್ತಿದ್ದು ಈಗ ನೆನಪಿಲ್ಲ. ಸರ್ವೆ ನಂಬರ 23 ರ ಚಿಕ್ಕುಬಂದಿ ಪಶ್ಚಿಮಕ್ಕೆ ಗೊವಿಂದಪ್ಪ ಅವರ ಆಸ್ತಿ , ಉತ್ತರ ದಿಕ್ಕಿಗೆ ಕೃಷ್ಣಪ್ಪ ಅಗಸಾದ ಅವರ ಆಸ್ತಿ, ಪೂರ್ವ ದಿಕ್ಕಿಗೆ ಕಾಶಪ್ಪ ಅವರ ಆಸ್ತಿ ದಕ್ಷಿಣ ದಿಕ್ಕಿನಲ್ಲಿ ದೇವಕ್ಕರವರ ಆಸ್ತಿ ಇರುತ್ತದೆ. ಅದೇ ರೀತಿಯಾಗಿ ಸರ್ವೆ ನಂಬರ 27 ರ ಪಶ್ಚಿಮಕ್ಕೆ ಕಾಡು, ದಕ್ಷಿಣ ದಿಕ್ಕಿಗೆ ರಸ್ತೆ, ಉತ್ತರಕ್ಕೆ ದುಂಡಪ್ಪ ಅವರ ಆಸ್ತಿ, ಪೂರ್ವಕ್ಕೆ ಗಫಾರ ಅವರ ಆಸ್ತಿ ಇರುತ್ತದೆ. ದಾವಾ ಆಸ್ತಿಯು ನನ್ನ ತಂದೆಯ ಆಸ್ತಿ ಎಂದು ತೋರಿಸಲು ಯಾವುದೇ ದಾಖಲೆ ಹಾಜರು ಪಡಿಸಿಲ್ಲ. ದಾವಾ ಆಸ್ತಿಗಳು ಯಾವುದೇ ಕಾಲದಲ್ಲಿ ನನ್ನ

ತಂದೆಯ ಆಸ್ತಿ ಆಗಿರುವುದಿಲ್ಲ ಎಂದರೆ ಸರಿ. ನನ್ನ ತಂದೆ ಯಾವಾಗ ಮೃತರಾದರು ಎಂದು ಹೇಳಲು ಬರುವುದಿಲ್ಲ. ದಾವಾ ಆಸ್ತಿಗಳು ಪ್ರತಿವಾದಿಯರ ತಾಬಾದಲ್ಲಿ ಇರುತ್ತದೆ ಎಂದರೆ ಸಾಕ್ಷಿಯು ನಮ್ಮ ಮತ್ತು ಪ್ರತಿವಾದಿಯರ ಜಂಟಿ ಸ್ವಾಧೀನದಲ್ಲಿ ಇರುತ್ತದೆ ಎಂದು ನುಡಿಯುತ್ತಾರೆ. 3ನೆ ಪ್ರತಿವಾದಿಯು 2ನೆ ವಾದಿಯ ಮಗನ ಹೆಂಡತಿ ಎಂದರೆ ಸರಿ. 2ನೆ ವಾದಿಯ ಮಗ 3ನೆ ಪ್ರತಿವಾದಿಯನ್ನು ಮನೆಯಿಂದ ಹೊರ ಹಾಕಿರುತ್ತಾರೆ ಎಂದರೆ ಸರಿಯಲ್ಲ. 2ನೆ ವಾದಿಯ ಮಗ ಮತ್ತು 3 ನೆ ಪ್ರತಿವಾದಿ ಒಂದೇ ಮನೆಯಲ್ಲಿ ಕೂಡಿ ವಾಸವಿರುತ್ತಾರೆ. ಇದನ್ನು ನಾನು ನೋಡಿರುತ್ತೇನೆ. 3ನೆ ಪ್ರತಿವಾದಿಯು ತನ್ನ ಗಂಡನ ಮೇಲೆ ಮನೆಯಿಂದ ಹೊರ ಹಾಕಿರುತ್ತಾನೆ ಎಂದು ಜೀವನಾಂಶ ಅರ್ಜಿ ಸಲ್ಲಿಸಿ ನ್ಯಾಯಾಲಯದಿಂದ ಜೀವನಾಂಶದ ಆದೇಶವನ್ನು ಪಡೆದಿರುತ್ತಾರೆ ಎಂದರೆ ಸರಿ. 3ನೇ ಪ್ರತಿವಾದಿಯ ಗಂಡನ ಹೆಸರು ನಾಗಪ್ಪ ಇರುತ್ತದೆ. ಈ ದಾವೆ ಮಾಡುವಾಗ 3ನೆ ಪ್ರತಿವಾದಿಯ ಗಂಡನ ಹೆಸರು ಗೊತ್ತಿತ್ತು. 5ನೇ ಪ್ರತಿವಾದಿಗೆ ಮದುವೆಯಾಗಿದ್ದು ಆಕೆಯ ಗಂಡನ ಹೆಸರು ಕೇಶಪ್ಪ ಆಗಿರುತ್ತದೆ. ಈ ಕೇಸನ್ನು ಮಾಡುವ ಪೂರ್ವದಲ್ಲಿ ಅಂದರೆ 4 ವರ್ಷದ ಹಿಂದೆ 5ನೆ ಪ್ರತಿವಾದಿಯ ಮದುವೆಯಾಗಿತ್ತು. ನಾನು ಉದ್ದೇಶಪೂರ್ವಕವಾಗಿ 3 ಮತ್ತು 5ನೇ ಪ್ರತಿವಾದಿಯರ ಗಂಡನ ಹೆಸರು ಗೊತ್ತಿದ್ದರೂ ಯಾವ ಕಾರಣಕ್ಕಾಗಿ ಅವರ ತಂದೆಯ ಹೆಸರು ನಮೂದಿಸಿರುತ್ತೇನೆ ಎಂಬ ಪ್ರಶ್ನೆಗೆ ಸಾಕ್ಷಿಯು 3ನೆ ಪ್ರತಿವಾದಿಯ ಮದುವೆಯಾಗಿತ್ತು ಆದರೆ 5ನೆ ಪ್ರತಿವಾದಿಯ ಮದುವೆಯಾಗಿಲ್ಲ ಎಂದು ನುಡಿಯುತ್ತಾರೆ. 3ನೆ ಪ್ರತಿವಾದಿಯ ತಂದೆ ಹೆಸರನ್ನು ವಾದಪತ್ರದಲ್ಲಿ ತಂದೆಯ ಆಸ್ತಿ ಎಂದು ತೋರಿಸಲು ಬರೆಸಿರುತ್ತೇನೆ. 3ನೆ ಪ್ರತಿವಾದಿಯ ಗಂಡನ ಹೆಸರು ಉದ್ದೇಶಪೂರ್ವಕವಾಗಿ ನಮೂದು ಮಾಡಿಲ್ಲ ಎಂದರೆ ಸರಿಯಲ್ಲ. ನಾನು ಕೇಸು ಮಾಡುವಾಗ 3ನೆ ಪ್ರತಿವಾದಿಯ ಗಂಡನ ಹೆಸರು ಬರೆಸಬೇಕೆಂಬ ನೆನಪಿರಲಿಲ್ಲ. 2ನೆ ವಾದಿಯ ಮಗ ನಾಗಪ್ಪ ಕಬ್ಬೂರ ಗ್ರಾಮದ ಪ್ರೇಮವ್ವ ಎಂಬುವವರನ್ನು 2ನೆ ಮದುವೆಯಾಗಿರುತ್ತಾನೆ ಎಂದರೆ ಸರಿ. ನಾನು 2 ನೆ ವಾದಿಯ ಮಗ ಹೇಳಿದ ರೀತಿ ನಾನು ಮತ್ತು ಅವರ ತಾಯಿ ಕೇಳುತ್ತೇವೆ ಎಂದರೆ ಸರಿಯಲ್ಲ. ನನ್ನ ತಂದೆ ನಾನು ಮತ್ತು ನನ್ನ ಸಹೋದರಿಯರು ಚಿಕ್ಕವರಾಗಿದ್ದಾಗ ಮೃತರಾಗಿರುತ್ತಾರೆ ಎಂದರೆ ಸರಿ. ನನ್ನ ಮದುವೆಯನ್ನು 1ನೆ ವಾದಿ ಮತ್ತು ಅವರ ಗಂಡ ಮಾಡಿರುತ್ತಾರೆ ಎಂದರೆ ಸರಿಯಲ್ಲ. ಸಾಕ್ಷಿಯು ಮುಂದುವರೆದು ನನ್ನ ತಾಯಿ ಮಾಡಿರುತ್ತಾರೆ ಎಂದು ನುಡಿಯುತ್ತಾರೆ. ನನ್ನ ತಾಯಿ 15 ರಿಂದ 16 ವರ್ಷದ ಹಿಂದೆ ಮೃತರಾಗಿರುತ್ತಾರೆ. ದಾವಾ ಆಸ್ತಿಗಳು ಮೂಲತಃ ಪಕ್ಕಿರಪ್ಪ ಲವಣಿ ಎಂಬುವವರ ಆಸ್ತಿ ಆಗಿರುತ್ತದೆ ಎಂದರೆ ಸರಿ”.

“ನನ್ನ ವಯಸ್ಸು ದಾವಾದ ವಾದ ಪತ್ರದಲ್ಲಿ ಉದ್ದೇಶ ಪೂರ್ವಕವಾಗಿ ಕಡಿಮೆ ತೋರಿಸಿರುತ್ತೇನೆ ಎಂದರೆ ಸರಿಯಲ್ಲ. ನಮಗೆಲ್ಲರಿಗೂ ಈಗ 60 ವರ್ಷಕ್ಕಿಂತ ಹೆಚ್ಚಿನ ವಯಸ್ಸಾಗಿತ್ತು ಎಂದರೆ ಸಾಕ್ಷಿಯು

ನೀವು ಹೇಳಿದ ರೀತಿ ಇರಬಹುದು ಎಂದು ಹೇಳುತ್ತಾರೆ. ದಾವಾ ಆಸ್ತಿಗಳು ಮಸಾರಿ ಜಮೀನಾಗಿದ್ದು ಒಳ್ಳೆಯ ಜಮೀನು ಆಗಿರುವುದಿಲ್ಲ. ದಾವಾ ಆಸ್ತಿಯ ಮೌಲ್ಯವು ದಾವಾ ಮಾಡುವ ಸಂದರ್ಭದಲ್ಲಿ ಎಷ್ಟು ಇತ್ತು ಎಂದು ಹೇಳಲು ಬರುವುದಿಲ್ಲ. ವಾದ ಪತ್ರದಲ್ಲಿ ದಾವಾ ಆಸ್ತಿಯ ಮೌಲ್ಯ ಎಷ್ಟು ಎಂದು ಹೇಳಿ ಬರಿಸಿಲ್ಲ. ಒಂದು ಎಕರೆಗೆ ಕಿಮ್ತು ರೂ.2 ರಿಂದ 2 ವರೆ ಲಕ್ಷ ಇರುತ್ತದೆ. ಈ ದಾವೆ ಮಾಡುವಾಗ ಇದೇ ಮೌಲ್ಯ ಇತ್ತು ಎಂದರೆ ಸರಿ. ಈಗ 1 ಎಕರೆಗೆ 4 ಲಕ್ಷ ಆಗುತ್ತದೆ ಎಂದರೆ ಸರಿಯಲ್ಲ. ನಾನು ಹಾಜರು ಪಡಿಸಿರುವ ವಂಶವೃಕ್ಷದಲ್ಲಿ ವಯಸ್ಸಿನ ಅನುಕ್ರಮವಾಗಿ ಪಕ್ಷಗಾರರನ್ನು ತೋರಿಸಿಲ್ಲ ಮತ್ತು ಪಕ್ಷಗಾರರ ವಯಸ್ಸು ನನಗೆ ಗೊತ್ತಾಗುವುದಿಲ್ಲ. ನಮ್ಮಲ್ಲಿ ದೊಡ್ಡವರು ಗಂಗವ್ವ ಅವರ ನಂತರ ಪಾರವ್ವ, ಅವರ ನಂತರ ಚಂದ್ರವ್ವ, ಅವರ ನಂತರ ಸಂಗವ್ವ, ಅವರ ನಂತರ ಮಲ್ಲಪ್ಪ, ಅವರ ನಂತರ ನೀಲವ್ವ ಇರುತ್ತಾರೆ. ಗಂಗವಗಿಂತ ಒಂದು ವರ್ಷ ಚಿಕ್ಕವರು ಪಾರವ್ವ ಎಂದರೆ ಸರಿ. ಇವರಿಗಿಂತ ಒಂದು ವರ್ಷ ಚಿಕ್ಕವರು ಚಂದ್ರವ್ವ ಎಂದರೆ ಸರಿ. ಇವರಿಗಿಂತ ಒಂದು ವರ್ಷ ಚಿಕ್ಕವರು ಸಂಗವ್ವ ಎಂದರೆ ಸರಿ. ಸಂಗವ್ವನಿಗಿಂತ ಒಂದು ವರ್ಷ ಚಿಕ್ಕವರು ಮಲ್ಲಪ್ಪ, ಇವರಿಗಿಂತ ಒಂದು ವರ್ಷ ಚಿಕ್ಕವರು ನೀಲವ್ವ ಎಂದರೆ ಸರಿ. ಮಲ್ಲಪ್ಪ 30 ವರ್ಷದ ಹಿಂದೆ ಮೃತರಾಗಿರುತ್ತಾರೆ ಎಂದರೆ ಸರಿ. ಆತ ಮರಣ ಹೊಂದಿದಾಗ ಆತನ ವಯಸ್ಸು 35 ರಿಂದ 40 ಆಗಿತ್ತು ಎಂದರೆ ಸಾಕ್ಷಿಯು ಇರಬಹುದು ಎಂದು ನುಡಿದಿರುತ್ತಾರೆ. ದಾವಾ ಆಸ್ತಿಗಳು ಯಾವ ಕಾಲದಲ್ಲಿ ನನ್ನ ತಂದೆಯ ಮಾಲಿಕತ್ವದಲ್ಲಿ ಇರಲಿಲ್ಲ ಎಂದರೆ ಸಾಕ್ಷಿಯು ಹೌದು ಆದರೆ ನನ್ನ ತಾತನ ಹೆಸರಿನಲ್ಲಿರುತ್ತದೆ ಎಂದು ನುಡಿಯುತ್ತಾರೆ. ನನ್ನ ತಾತನ ಆಸ್ತಿ ಎಂದು ಯಾವುದೇದಾಖಲೆ ಹಾಜರುಪಡಿಸಿಲ್ಲ ಎಂದರೆ ಸರಿಯಲ್ಲ. ನನ್ನ ತಾತನ ಆಸ್ತಿ ಎಂದು ಈ ಪ್ರಕರಣ ಇರುವುದಿಲ್ಲ ಎಂದರೆ ಸರಿಯಲ್ಲ. ನನ್ನ ತಂದೆ ಮತ್ತು ಅಜ್ಜ ಯಾವಾಗ ಮೃತರಾದರು ಎಂದು ನಿಖರವಾಗಿ ಹೇಳಲು ಆಗುವುದಿಲ್ಲ. ಸಾಕ್ಷಿ ಮುಂದುವರೆದು ನನ್ನ ತಂದೆ ನನ್ನ ತಾತನಿಗಿಂತ ಮೊದಲೇ ಮೃತರಾಗಿರುತ್ತಾರೆ ಎಂದು ನುಡಿಯುತ್ತಾರೆ. ನನ್ನ ತಂದೆ ಮೃತರಾಗುವ ಸಮಯದಲ್ಲಿ ಆತನಿಗೆ ಆಸ್ತಿ ಇತ್ತು. ದಾವಾ ಆಸ್ತಿಗಳೇ ಸದರಿ ಆಸ್ತಿಗಳಾಗಿರುತ್ತವೆ. ದಾವಾ ಆಸ್ತಿಗಳು ನನ್ನ ತಂದೆಯ ಆಸ್ತಿ ಅಲ್ಲ ಎಂದರೆ ಸರಿಯಲ್ಲ. ನನ್ನ ತಂದೆ ಮೃತರಾದಾಗ ನನಗೆ 20 ವರ್ಷ ವಯಸ್ಸಾಗಿತ್ತು. ನನ್ನ ಮದುವೆಯನ್ನು ನನ್ನ ತಾಯಿ ಮಾಡಿರುತ್ತಾರೆ. ನನ್ನ ತಾಯಿ ಮೃತರಾಗಿ ಸುಮಾರು 5-6 ವರ್ಷಗಳಾಗಿರುತ್ತವೆ. ನಾನು ಮತ್ತು ಪ್ರತಿವಾದಿಯರು ಪರಿಶಿಷ್ಟ ಪಂಗಡ ಮತ್ತು ಜಾತಿಗೆ ಸೇರಿದವರು ಎಂದರೆ ಸರಿ. ಮಲ್ಲಪ್ಪನಿಗೆ ಒಬ್ಬ ಪಕ್ಕಿರಪ್ಪ ಲಮಾಣಿ ಎಂಬುವರಿಂದ ಆಸ್ತಿ ಬಂದಿರುತ್ತದೆ ಎಂದರೆ ಸರಿಯಲ್ಲ. ಮಲ್ಲಪ್ಪನನ್ನು ಪಕ್ಕಿರಪ್ಪ ಲಮಾಣಿಯವರು ಸಾಕಿರುತ್ತಾರೆ ಎಂದರೆ ಸರಿಯಲ್ಲ. ಪಕ್ಕಿರಪ್ಪ ಲಮಾಣಿ ನಮ್ಮ ಕುಟುಂಬಕ್ಕೆ ಯಾವುದೇ ರೀತಿ ಸಂಬಂಧಪಟ್ಟಿಲ್ಲ ಎಂದರೆ ಸರಿಯಲ್ಲ.

ಪಕ್ಕೀರಪ್ಪ ಲಮಾಣಿಯವರ ಚಾಕ್ರಿಯನ್ನು ಮಲ್ಲಪ್ಪನವರು ಮಾಡಿರುತ್ತಾರೆ ಎಂದರೆ ಸರಿಯಲ್ಲ. ದಾವಾ ಆಸ್ತಿಗಳು ಪಕ್ಕೀರಪ್ಪ ಲಮಾಣಿಯವರಿಂದ 2 ನೇ ಪ್ರತಿವಾದಿಯ ಗಂಡ ಮತ್ತು 3 ರಿಂದ 6ನೇ ಪ್ರತಿವಾದಿಯರ ತಂದೆಗೆ ಬಂದಿರುತ್ತದೆ ಎಂದರೆ ಸರಿಯಲ್ಲ. ನನಗೆ ದಾವಾ ಆಸ್ತಿಯಲ್ಲಿ ಯಾವುದೇ ಹಕ್ಕು ಇರದಿದ್ದರೂ ಸುಳ್ಳು ದಾವೆ ಮಾಡಿ ಸುಳ್ಳು ಸಾಕ್ಷ್ಯ ಹೇಳುತ್ತಿದ್ದೇನೆ ಎಂದರೆ ಸರಿಯಲ್ಲ. ನನಗೆ ದಾವಾ ಆಸ್ತಿಯಲ್ಲಿ ಯಾವುದೇ ಹಕ್ಕು ಇಲ್ಲ ಎಂದರೆ ಸರಿಯಲ್ಲ. ನಾನು ರೆವಿನ್ಯೂ ಅಧಿಕಾರಿಗಳ ಜೊತೆ ಮಿಲಾಪಿಯಾಗಿ ದಾಖಲೆಗಳನ್ನು ಸೃಷ್ಟಿ ಮಾಡಿದ್ದೇವೆ ಎಂದರೆ ಸರಿಯಲ್ಲ. ನಾವು ಮಲ್ಲಪ್ಪನ ಆಸ್ತಿಯ ಸಂಬಂಧಿಕರು ಎಂದು ಹೆಸರನ್ನು ಹಚ್ಚಿಕೊಂಡಿರುತ್ತೇವೆ. ದಾವಾ ಆಸ್ತಿಯು ಮಲ್ಲಪ್ಪನ ಹೆಸರಿನಲ್ಲಿ ಇರಲಿಲ್ಲ. ನನ್ನ ತಾಯಿ ನಮ್ಮೆಲ್ಲರ ಹೆಸರನ್ನು ಹಚ್ಚಿರುತ್ತಾರೆ. 21 ವರ್ಷಗಳ ಹಿಂದೆ ನಮ್ಮೆಲ್ಲರ ಹೆಸರನ್ನು ನನ್ನ ತಾಯಿ ಹಚ್ಚಿರುತ್ತಾರೆ. ನಮ್ಮ ಹೆಸರನ್ನು ಹಚ್ಚುವ ಪೂರ್ವದಲ್ಲಿ ನಮ್ಮ ತಾತನ ಹೆಸರು ಇತ್ತು. ನನ್ನ ತಾಯಿ ನಮ್ಮ ಹೆಸರು ಹಚ್ಚಿದ ಬಗ್ಗೆ ದಾಖಲೆ ಇರಬಹುದು. ಅದನ್ನು ನ್ಯಾಯಾಲಯಕ್ಕೆ ಹಾಜರುಪಡಿಸಿರುತ್ತೇನೆ. ಮಲ್ಲಪ್ಪನಿಗೆ ವಾರಸುದಾರನೆಂದು ಹೇಳಿ ನಾವು ಹೆಸರನ್ನು ಹಚ್ಚಿಕೊಂಡಿರುತ್ತೇವೆ ಎಂದರೆ ಸರಿಯಲ್ಲ. ನಾನು ಮಲ್ಲಪ್ಪನ ವಾರಸುದಾರರು ಅಲ್ಲ ಎಂದರೆ ಸರಿಯಲ್ಲ. 2ನೇ ಪ್ರತಿವಾದಿಯ ಮೃತ ಮಲ್ಲಪ್ಪನ ಹೆಂಡತಿ ಎಂದರೆ ಸರಿ. 3 ರಿಂದ 6 ನೇ ಪ್ರತಿವಾದಿಯರು ಮಲ್ಲಪ್ಪನ ಮಕ್ಕಳು ಎಂದರೆ ಸರಿ. ನಾನು ಮತ್ತು ಇತರ ವಾದಿಯರು ಮೃತ ಮಲ್ಲಪ್ಪನ ಸಹೋದರಿಯರು ಎಂದರೆ ಸರಿ. ನನ್ನ ತಂದೆ ಜೀವಿತಾವಧಿಯಲ್ಲಿ ಕೂಲಿ ಕೆಲಸ ಮಾಡುತ್ತಿದ್ದರು ಎಂದರೆ ಸರಿಯಲ್ಲ. ನನ್ನ ತಂದೆ ಜೀವಂತವಾಗಿದ್ದಾಗ ಗಂಗವ್ವ ಮತ್ತು ನೀಲವ್ವರ ಮದುವೆ ಮಾಡಿಸಿರುತ್ತಾರೆ ಎಂದರೆ ಸಾಕ್ಷಿಯು ಗಂಗವ್ವ ಮತ್ತು ಪಾರವ್ವರ ವಿವಾಹ ಮಾಡಿಸಿದ್ದು ಉಳಿದ ಸಹೋದರಿಯರ ವಿವಾಹವನ್ನು ಹಾಗೂ ನನ್ನ ವಿವಾಹವನ್ನು ನನ್ನ ತಾಯಿ ಮಾಡಿಸಿರುತ್ತಾರೆ. ಗಂಗಟವ್ವ ಮತ್ತು ಆಕೆಯ ಗಂಡ ಸೇರಿ ಉಳಿದ ಹೆಣ್ಣು ಮಕ್ಕಳ ವಿವಾಹವನ್ನು ಮಾಡಿರುತ್ತಾರೆ ಎಂದರೆ ಸರಿಯಲ್ಲ”.

15. The Dw.1 has reproduced the contents of the written statement in his chief examination affidavit. The same witness has denied the suggestions of the plaintiff counsel in the cross-examination.

16. On perusal of the entire materials on record, it is relevant to note that the defendants have admitted the relationship with the plaintiffs but the defendant No.2 to 6 have not admitted the suit property is the joint family property of plaintiffs and defendants. The Pw.1 has deposed and admitted in one breath in the cross-examination that the suit properties are not the properties of that their father but it were their grand father's property. And in another breath, the Pw.1 deposed that the suit properties were belonged to her father. In this regard, the plaintiffs have not placed any material worth to show the suit properties were belonged to their grand father. And more over, the genealogy tree produced by the plaintiffs annexed to plaint is not discloses the name of the grand father of the plaintiffs and defendants. The pw.1 has not at all sure regarding whether the suit properties were belonged to her father or her grand father. The Records of Rights Extracts produced by the plaintiffs are not discloses the suit properties were originally belonged to plaintiffs and defendant No.1 father. Per-contra, the documents produced by the defendant's i.e., Ex.D1 to 7 are clearly reveals that the suit properties originally belonged to one deceased Fakkirappa Jatreppa Lamani. As per the written statement of the defendants, the said person is not concerned to plaintiffs and defendant No.1 family. The documents produced by the defendants further reveals that the suit property was transferred in to the name of the 2<sup>nd</sup> defendant husband or defendant No.3 to 6's father, after the demise of

Fakkirappa Jatreppa Lamani. The name of 2<sup>nd</sup> defendant husband or defendant No.3 to 6's father was continued till for the year of 1988-89. The plaintiff has not examined any one of the witnesses to prove they are the legal heirs of the deceased Fakkirappa Jatreppa Lamani. The documents produced by the plaintiffs and defendants have not reveals the suit properties are the joint family properties of them. Therefore, I have no hesitate to come to conclusion that the suit properties are not joint or ancestral properties of the plaintiffs and defendants. Hence, I answered issue No.1 in the negatively and issue No.3 in the affirmatively.

**17. Issue No.4:** The defendants have taken a specific contention in their written statement that the plaintiffs have illegally got their names entered in the revenue records of the suit properties claiming to be legal heirs of the deceased Mallappa. On perusal of the pleadings and materials on record, it is clearly reveals that the plaintiff No.1 to 3, defendant No.1 and deceased Paravva is the sister to the deceased Mallappa. The defendants in their written statement have admitted this fact. As I mentioned above the suit properties are not the ancestral properties of the plaintiffs and defendants, then how the plaintiffs have got their names entered in the revenue record of the suit properties. The documents produced by the defendants are clearly goes to show that the suit properties originally belongs to one Fakkirappa Jatreppa Lamani and after his demise, the name

of the Mallappa, who is husband of the 2<sup>nd</sup> defendant and father of the defendant No.3 to 6 had been entered. Hence, the suit properties were become absolute properties of the deceased Mallappa. The Ex.P2 produced by the plaintiffs does not disclose the names of the defendant No.2 to 6. So the appellant in the Ex.P2 has suppressed the materials facts before the concerned Assistant Commissioner, Savanur and gets the illegal order in her favour. Hence, it is appears to me that the defendants have established their defense set out in the written statement by adducing oral and documentary evidence. Therefore, I answered issue No.4 in the affirmatively.

**18. Issue No.5:** The defendants have another contention that the court fee paid by the plaintiffs is not sufficient. On perusal of valuation slip enclosed by the plaintiff is clearly discloses that the suit is valued at Rs.32 under section 35(2) read with section 7 (2) (b) of Karnataka Court Fee and Suit Valuation Act 1958. But the counsel for the plaintiffs was argued that if the court directs to plaintiffs to pay deficit court fee, the plaintiffs are ready to pay the deficit court fee. The arguments canvassed by the plaintiff counsel in this regard is clearly goes to show that the plaintiffs have not paid correct court fee. As per the above-mentioned provision of the Law, the plaintiffs have to be paying the Court fee of Rs.200/- to get the relief of partition and separate possession. Therefore, it is appears to me that the plaintiffs have not paid the right court

fee to Court while institution of this suit. Hence, I answered issue No.5 in the affirmatively.

**19. Issue No.2 and 6:** These issues are inter-linked each other, as such I considered these issues together to avoid repetition of facts of the case and also for common discussion. On perusal of the version of the Pw.1 is clearly goes to show that the genealogy Tree filed by the plaintiffs are not in a order and also the age of the plaintiffs mentioned in the plaint are not correct and further also the plaintiff has not mentioned the husband names of the defendant No.3 and 4 in the cause title in spite of having full of knowledge while institution of this suit. The attitude of the plaintiffs are clearly goes to show that they have filed this suit only to harass the defendants and also the plaintiffs have come to the Court not with clean hands and further also the plaintiffs have suppressed the materials facts in the pleadings. As I mentioned above, the suit properties are not the ancestral properties of the plaintiffs and defendants, then getting of 1/6<sup>th</sup> share in the suit properties are not at all arises. In overall consideration of the entire materials on record, it is appears to me that the plaintiffs have failed to prove their case in spite of adducing oral and documentary evidence. Therefore, I answered issue No.2 and 6 in the affirmatively.

**20. Issue No.7** As per following;

**ORDER**

**The suit of the plaintiffs is hereby  
dismissed with costs.**

**Draw the decree accordingly.**

(Dictated to the Stenographer, directly typed and computerized by her, corrected, signed and then pronounced by me in the Open Court on this the 7<sup>th</sup> day of March, 2015)

**(RAGHAVENDRA. R)  
Civil Judge & JMFC.,  
Savanur.**

**A N N E X U R E**

**WITNESSES EXAMINED ON BEHALF OF PLAINTIFFS:**

Pw1: Neelavva W/o Mahadevappa @ Manppa Lamani.

**DOCUMENTS MARKED ON BEHALF OF PLAINTIFFS:**

Ex.P1: Certified copy of appeal.  
Ex.P2: Certified copy of order in RTS/APSR-115/92-93.  
Ex.P3: Endorsement given by the Tahashildar, Savanur to the plaintiff No.2.  
Ex.P4 to 7: RTC extracts.  
Ex.P8: Endorsement given by the Tahashildar, Savanur to the plaintiff No.3.

**WITNESSES EXAMINED ON BEHALF OF DEFENDANTS:**

Dw1: Mahadevappa S/o Mallappa Lamani.

**DOCUMENTS MARKED ON BEHALF OF DEFENDANTS:**

Ex.D1: Patta receipt.  
Ex.D2 to 6: RTC extracts.  
Ex.D7: VPC property extract.

**Civil Judge & JMFC.,  
Savanur.**

