

Form No.9(Civil)
Title Sheet for Judgment
in Suits
(R.P.91)

IN THE COURT OF CIVIL JUDGE & J.M.F.C.,

AT SHIGGAON.

PRESENT: SRI KAMALAKSHA D.
B.A. LL.B.,
CIVIL JUDGE & J.M.F.C.,
SHIGGAON.

DATED THIS THE 18th DAY OF APRIL-2017

O.S. No. 179/2016

PLAINTIFFS

- : 1) Smt.Basavantevva @ Ningavva
W/o Paramanna Goudoor
Age: 47 years,
Occ: Agriculture & Household,
R/o Chandapur,
Now Camp at:House No.EWS-72,
Gandhi Nagar, Gokul Road,
Hubli, Dist : Dharwad.
- 2) Ku. Abhishek
S/o Prakash Galemmanavar
Age: 10 years, Since Minor,
rep. by his N/M and M/G: Plaintiff No.4.
- 3) Ku. Akash
S/o. Prakash Galemmanavar
Age: 07 years, Since Minor,
rep. by his N/M and M/G: Plaintiff No.4.

- 4) Smt. Nirmala
W/o. Prakash Galemmanavar
Age: 33 years, Occ: Agriculture,
R/o. Chandapur,
Tq: Shiggaon, Dist: Haveri.

(By Pleader Sri S.T.Patil)

-- V/S --

DEFENDANT : Sri Gadigeppa
S/o Gurushantappa Galemmanavar
Age: 51 years, Occ: Agriculture,
R/o. Chandapur,
Tq: Shiggaon, Dist: Haveri.

(Exparte)

Date of institution of the Suit : 18-10-2016

Nature of the suit : Suit for Partition and
Separate Possession

Date of the commencement
of Recording of the evidence : 15-04-2017

Date on which the judgment
was pronounced : 18-04-2017

	<u>Year/s</u>	<u>Month/s</u>	<u>Day/s</u>
Total duration :	00	06	00

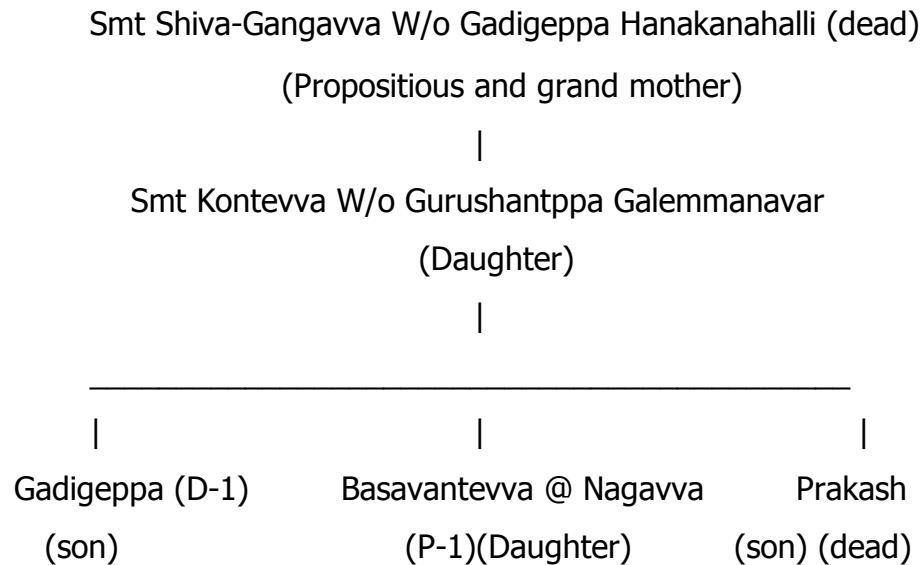
**(KAMALAKSHA D.)
Civil Judge & JMFC,
Shiggaon.**

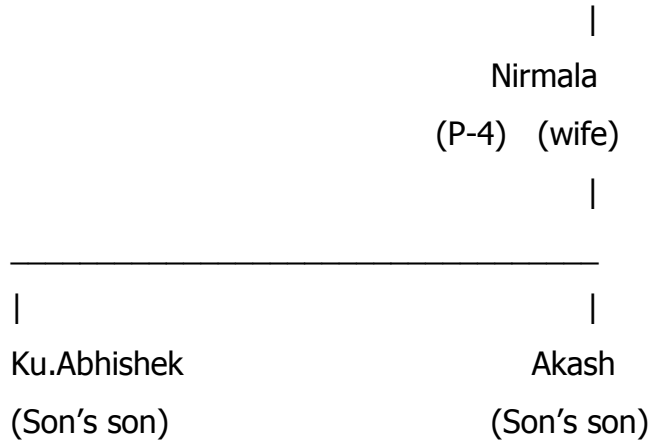
JUDGMENT

The suit is filed for partition and separate possession of 1/3rd share from the suit schedule properties.

2. The brief facts of the suit are as follows;

An agricultural land bearing survey No.84 measures 10 acres 39 guntas, survey No.85 measures 6 acres 36 guntas, situated at Neeralakatti village of Shiggaon Taluka and one red tiled house and open site in Chandapur Gram Panchayat property No.29 in survey No.30/1 and 30/2 properties with Floor mill and open site bearing property No.216, situated at Chandapur village of Shiggaon Taluka, are the suit schedule properties and undivided properties of original propitious one Smt Shivagangavva. The parties are related as under:





3. It is further submitted that, the plaintiff No.1 is the daughter of Kontevva and plaintiffs No.2 to 4 are the sons and wife of deceased son of Kontevva namely Prakash and defendant No.1 is the eldest son of Kontevva and she was only daughter of the original owner Shiva-Gangavva. The plaintiffs No.2 and 3 are minors, who are under the care and custody of their natural mother and minor guardian plaintiff No.4. Therefore, the plaintiff No.4 represents the suit on behalf of minor plaintiffs No.2 and 3. The suit para-2(A), (C) and (D) properties are ancestral properties of joint family properties, originally owned by the grand mother of plaintiff No.1 and the common owner namely Shivagangavva. Same were inherited by the mother of the plaintiff No.1 herein namely Kontevva, after the death of Shivagangavva on 25-05-2002, as evidenced by mutation entry No.1004 of Neerakatti village, which one entered on 22-10-2002, and on record till today. The suit para-2 (B) agricultural land measures 2 acres of land is

concerned, same being located adjacent to the suit para-2(A) property, originally, purchased by the grand mother of this plaintiff No.1 namely Shivagangavva, as a Khara of the family, in the name of defendant No.1 herein namely Gadigeppa, from its previous owner Babanna Hanamnatappa Kalal under the registered sale deed dated 12-04-1982, on behalf of the joint family of plaintiffs, defendant and deceased mother Smt Kontevva.

4. It is also further submitted that as on the date of alleged sale deed, Sri Gadigeppa had just attained majority and not having any independent source of income so as to make any self-acquisition and till today, except the suit para-2(a) income bearing agricultural land, there had been no other source to income so as to purchase any lands in the hands of defendant and as such, the said suit para-2(B) is also one of the joint family's properties of plaintiffs and defendant.

5. It is further explained in the plaint that the defendant being an eldest male member in the family, so far, managing the joint family affairs and he himself got mutated the names of the plaintiffs along with himself in respect of the suit para-2(A) property by filing a Vardi to Tahasildar, after the death of mother Kontevva on 04-08-2006, as per M.E.No.14/2015-16 of Neerakatti village. But, however, as regards, the suit para-2(B) to (D) properties are concerned, name of the defendant, original owner Shivagangavva, and wife of the defendant No.1 namely Vijaya, and the deceased

father of Gurushantappa are being continued in the Revenue and Panchayat records. But, since there had been no partition and separate possession in between all the Class-I legal heirs of the original owner Shivagangavva, the plaintiffs and defendant have jointly continued to commonly own, use and enjoy the suit properties, without anybody's interference.

6. It is further submitted that the plaintiffs have made request to partition the suit schedule properties. However, the demand of the plaintiff effect the amicable partition by assembling the elders at Chandapur village on 01-09-2016. For which, though the defendant initially agreed but later on started postponing and avoiding the plaintiffs demand for partition. Therefore, without any alternative the plaintiff have approached and have prayed to decree the suit with the cost.

7. After institution of suit summons was duly served to the defendant. He has not approached before the Court hence, he has been placed *exparte*.

8. To get relief of partition, the plaintiff is examined herself as PW-1 and got marked 12 documents as Ex.P-1 to P-12. The trustworthiness of the PW-1 is not questioned in the cross examination.

9. I heard Sri STP, Learned Counsel for plaintiff.

10. The points arise for my determination are as follows:

1) Whether the plaintiffs prove that the schedule properties are under joint and constructive possession of parties of this suit?

2) Whether the plaintiffs are entitled to get relief as sought in the plaint?

3) What order or decree?

11. My answers to the above points are:

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

REASONS

12. **Point No.1 and 2:** Since these two points are interlinked with each other, these are taken up together for common discussion to avoid the repetition of facts and circumstances of the evidence.

13. The 1st plaintiff is examined herself and PW-1. In the chief examination she totally deposed the facts of the plaint are as ditto. It is not proper to reproduce the version of the chief examination of PW-1 to avoid repetition of facts and circumstances of the evidence. The plaintiffs have produced as many as 12 documents. Ex.P-1 is the RTC of survey No.84, which stands in the name of Jatteppanavar Yallavva W/o Somanna. Ex.P-2 is the certified copy of the hand written RTC of survey No.84, which

stands in the name of Shivagangavva W/o Gadigeppa Hanakanahalli. She is the original propitious of the suit schedule properties. Ex.P-3 is the certified copy mutation register No.910/1996. The death of the original propitious is reported. After her death, the name of the plaintiff and defendant are jointly entered in the Revenue records. Ex.P-4 is the certified copy of mutation register No.1004/2002. After the death of original propitious Shivagangavva W/o Gadigeppa Hanakanahalli, the name of her legal heirs came to be entered in the Revenue records of suit schedule property. Ex.P-5 is the certified copy of M.R.No.1004 of suit property No.84 of Neeralakatti village of Shiggaon Taluka, which stands in the name of Shivagangavva W/o Gadigeppa Hanakanahalli. After her death the name of Galemmanavar Kontevva W/o Gurushantappa, came to be entered in the Revenue records. Ex.P-6 is the death certificate of Smt Kontevva. The death of original propitious is undisputed fact. Ex.P-7 is the certified copy of the application given by the plaintiffs to the office of the Tahasildar. Ex.P-8 is the mutation Register document of H14. The joint names of legal heirs of original propitious are came to be entered in the Revenue records as per Ex.P-8. Ex.P-9 is the RTC of survey No.85, which stands in the name of Sri Gadigeppa Gurushantappa Galemmanavar. Ex.P-10 is the certified copy of the mutation register No.616. Ex.P-11 is the certified copy of Panchayat Utar of property No.35, which stands in

the name of Shivagangavva W/o Gadigeppa Hanakanahalli. Ex.P-12 is the demand extract of property No.289 of Chandapur village, which stands in the name of Gadigeppa Gurushantappa Galemmanavar.

14. The version of the oral and documentary evidence of plaintiff is not challenged in the cross examination. The death of the original propertious is undisputed fact. The plaintiffs and defendant are the legal heirs of original propertious. The suit schedule properties are yet to be divided. Proof of earlier partition is not proved. Therefore, the plaintiffs and defendant are entitled to get their respective share from the suit schedule properties. Hence, the Point No.1 and 2 are answered in the Affirmative.

15. **Point No.3:-** In view of discussion held in Point No.1 and 2, I proceed to pass the following;

O R D E R

The suit of the plaintiffs is hereby decreed with cost.

The plaintiff is entitled to get 1/3rd share from the suit schedule properties.

In view of decision of Hon'ble Supreme Court in 2009 AIR SCW 6541 Shub Karan Bubna vs Sita Saran Bubna, office is hereby directed to assign new FDP number to this case

and post the case for Final Decree Proceedings.

Let be drawn decree accordingly.

(Dictated to steno, transcribed and typed by her, then corrected, signed and pronounced by me in the open Court on this the 18th day of April-2017).

**(KAMALAKSHA D.)
Civil Judge & JMFC,
Shiggaon.**

ANNEXURE

I. List of witnesses examined on behalf of Plaintiff:

PW-1 : Basavantevva @ Ningavva
W/o Paramanna Goudoor

II. List of documents exhibited on behalf of Plaintiff:

Ex.P-1 & 2 : RTC Extracts
Ex.P-3 to 5 : Certified copies of mutation registers
Ex.P-6 : Death Certificate
Ex.P-7 : Certified copy of application
Ex.P-8 : M.R No. H14
Ex.P-9 : RTC extract
Ex.P-10 : Certified copy of mutation register
Ex.P-11 and 12 : Certified copies of Panchayat Utars

III. List of witnesses examined on behalf of Defendant :

-- N I L --

IV. List of documents exhibited on behalf of Defendant:

-- N I L --

**CIVIL JUDGE & JMFC,
SHIGGAON.**

glm*

Judgment pronounced in the
open court vide separate
Order as under:

O R D E R

The suit of the plaintiffs is hereby decreed with cost.

The plaintiff is entitled to get 1/3rd share from the suit schedule properties.

In view of decision of Hon'ble Supreme Court in 2009 AIR SCW 6541 Shub Karan Bubna vs Sita Saran Bubna, office is hereby directed to assign new FDP number to this case and post the case for Final Decree Proceedings.

Let be drawn decree accordingly.

**CIVIL JUDGE & JMFC.,
SHIGGAON.**

