

IN THE COURT OF SENIOR CIVIL JUDGE ALAND

PRESENT

SRI. PRAKASH.C.D., B.A. LLB (Spl)

SENIOR CIVIL JUDGE ALAND

DATED THIS 24th DAY OF AUGUST 2018

O.S. No.25/2013

Plaintiff...

Sanjeevkumar S/o Shivashankar Shakapure,
Age : 29 years, Occ: Agriculture,
R/o Aland, Tq : Aland, Dist: Kalaburagi.

(By Sri.P.N.Shah Advocate)

V/s

Defendants...

- 1) Laxman S/o Shivashankar Shakapure,
Age 68 years, Occ : Agriculture,
R/o Aland, Now residing at Shivaganga Nilaya,
Yelahanka, New Town, Anantpur Gate,
8th Main Yalahanka, Bangalore.
- 2) Rachubai W/o Basawaraj Kadarage, Age 62 years,
Occ : Agriculture, R/o Village Kinni Sultan,
Tq.Aland, Dist Gulbarga.
- 3) Shobha W/o Mallappa Hangargi, Age 58 years,
Occ : Agriculture, R/o Village Kinni Sultan,
Tq.Aland, Dist : Gulbarga.
- 4) Shivanand S/o Shivashankar Shakapure,
Age 50 years, Occ : Agriculture,
R/o By the side of Dr.P.N.Shah, Hospital,
Tq.Aland. Dist Gulbarga.
- 5) Shantabai W/o Shivasharanappa Mulage,
Age 48 years, Occ : Agriculture,
R/o Village Sarasamba, Tq.Aland,
Dist : Gulbarga, Now residing at Door No.670, LIG.
IInd Block, 5th face Nagarjun Apartments Yelahanka.

- 6) Shashikant S/o Shivashankar Mulage, Age 45 years,
Occ : Agriculture, R/o Aland, Dist : Gulbarga,
Now residing at Victoria Clinic, K.V.Complex Coldpalli,
Tq.Pallur, Dist.Tamilnadu.
- 7) Sangeeta W/o Sanjay Hosloore, Age 40 years,
Occ : Agriculture, R/o Village Shirwal, Tq.Akkalkot,
Dist.Solapur now residing at Door No.789, MIG.
Nagarjun Apartments, Yalhanka, New Town,
Bangalore.
- 8) Saroja W/o Kalyanrao Patil, Age 35 years,
Occ : Agriculture, R/o Village Devantagi, Tq.Aland,
Dist : Gulbarga.

(Defendant No.1 and 5 to 8 by Sri.J.N.Hanchate
Advocate, Defendant No.2 by Sri.S.D.Bhosge Advocate,
Defendant No.4 by Sri.S.S.Chinchure Advocate and
Defendant No.3 placed exparte)

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|--------------------------------|--|
| 1. Date of institution of suit | - 19-04-2013 |
| 2. Nature of suit | - Suit for partition, Separate Possession. |
| 3. Date of recording evidence | - 16-09-2017 |
| 4. Date of closure of evidence | - 19-06-2018 |
| 5. Date of disposal | - 24-08-2018 |
| 6. Total duration | - years / months/ days 05 / 04 / 05 |

J U D G M E N T

The plaintiff has filed this suit against the defendants for partition, separate possession.

2. Suit schedule property is as under.

- 1) Land Sy.No.771/1 measuring 4 acres 11 guntas.
- 2) Land Sy.No.773/1 measuring 3 acres 38 guntas.

Both situated at proper Aland and commonly bounded as under;

East : Land of Ganapati Lamani.
 West : Nala.
 North : Land of Gurushantappa Jawali.
 South : Land of Gurulingappa Shakapure.

3. House property bearing TMC No.8-1-82, 8-1-83, 8-1-84. Situated at proper Aland near Sri Ram Market Aland and commonly bounded as follows :

East : Lane thereafter, house of Dilip Gandhi.
 West : Property of Dr.P.N.Shah.
 North : Road.
 South : Shah Mangal Karyalaya.

3. The case of the plaintiff's in brief is as follows:

That the plaintiff and defendants are the real brothers and sisters. They constitute joint Hindu family, they are all coparceners and they are in joint ownership, possession and in enjoyment of the suit schedule properties. The defendant No.1 Laxman is the Manager of their joint family. The suit schedule properties are the ancestral properties inherited by their parents Shivashankar and Shivagangabai, both have expired before six and three years, respectively. Parents of the parties died intestate. During the life time and after the death of

the parents of the parties till today suit schedule properties are not divided among the parties.

4. It is further contended that, since from long time plaintiff, defendant No. 1 and 6 are residing out of Aland for their livelyhood. Defendant No.4 is permanently residing at Aland. Recently the plaintiff came to know that, behind the back of plaitniff, the defendant has entered his name in the RoR of the suit lands and in the khata extracts of suit house in the TMC. Defendant No.4 alone is taking the entire yield of the suit lands and not giving proper accounts of the ancestral properties and there produces.

5. Plaintiff further contended that, it is learnt by him that, the plaintiff taking undue advantage of his name appearing in the record of rights has canvassing in the down that he is going to sell some portion of land of the suit properties. The plaintiff by himself and through the respectable elders of the village has told the plaintiff to stop such illegal activities, but the defendant No.4 did not head it. The plaintiff is having 1/9th share in the suit schedule properties and hence prayed to decree the suit.

6. In pursuance of suits summons, defendants No.1, 5 and 8 appeared before the court through their counsel Sri.J.N.Hanchate

Advocate and filed written statement/counter claim admitting the entire plaint averments made by the plaintiff and in counter claim claimed that, suit of the plaintiff be decreed and their 1/9 share each be allotted.

7. In pursuance of notice, defendants No.6 and 7 have filed written statement and in their written statement admitted the claim of plaintiff and prayed to decreed the suit. These defendants further contended that, they do not want share in the suit schedule properties, and prayed to decree the suit.

8. In spite of service of summons, defendant No.3 has not appeared before the court and hence placed *ex parte*.

9. The only contesting defendant No.4 appeared before the court through Sri.S.S.Chinchoore Advocate and filed his detailed written statement as under;

10. The suit schedule 'A' properties alone are not sufficient in this case, the plaintiff has not included the land and houses, plots which are purchased in his name and his wife's name by the joint family income. This defendant has admitted the relationship among the parties. But, has denied that, the defendant No.1 is the Karta and managing the suit schedule properties. This defendant himself is the

permanent resident of Aland and as per the direction of plaintiff and defendant No.1 he is managing the lands situated at Aland.

11. It is further contended that the suit house is owned by the mother of plaintiff as it is her self acquired property and it is not the ancestral property. The mother of the parties has given the suit house to this defendant, and since then he is in possession and enjoyment of the same. As the suit house is the exclusive property of the mother she has given it to this defendant through court decree. Hence neither plaintiff nor other defendants are having share in the suit house as it exclusively belongs to defendant No.4. It is further denied the contention of plaintiff that there is no partition in the joint family.

12. This defendant in his further plea has contended that, there was already oral partition took place between the parties in the year 2002. The suit house was the exclusive property of his mother and she has allotted it to this defendant as per court decree in O.S.No.130/2003. In the said oral partition the lands have been given to the plaintiff and other properties situated at Bangalore was allotted to the other defendants No.1 and 6. As per this oral partition the plaintiff and defendants were enjoying their portion of properties. It is further contended that, in the oral partition their sisters have not

taken any share in the joint family properties. Defendants No.1 and 6 have no share in the landed properties as they have got share in the properties located at Bangalore.

13. It is further contended that, defendant No.1 and 6 have purchased some properties like plots, flats and houses at Bangalore, by the income of the joint family properties. The mother of the parties had leased the lands and given the amount to the plaintiff, defendant No.1 and 6. So these properties are also joint family properties, but the plaintiff intentionally has not included all the properties in this suit. Non inclusion of all the properties will defect this suit. Hence prayed to dismiss the suit.

14. In view of the above pleadings, my learned predecessor has framed the following ;

- 1) ಸದರಿ ದಾವಾಸ್ತಿಗಳು ತನ್ನ ಮತ್ತು ಪ್ರತಿವಾದಿಯರ ಜಂಟಿ ಹಕ್ಕಿನ ಪಿತ್ರಾರ್ಜಿತ ಆಸ್ತಿಗಳಾಗಿರುತ್ತವೆಂಬುದನ್ನು ವಾದಿಯು ರುಜುವಾತುಪಡಿಸುವರೇ ?
- 2) ಒ.ಎಸ್.ನಂ.130-2003 ರ ಡಿಕ್ರಿಯ ಪ್ರಕಾರ ದಾವಾಸ್ತಿ ಮನೆ ಸಂಖ್ಯೆ : ಟಿ.ಎಂ.ಸಿ. 06-1-20, 6-1-20-ಎ ಮತ್ತು 6-1-20 ಬಿ ಹಳೆ 8-1-82, 8-1-83, 8-1-84(ಹೊಸ), ಮನೆಗಳನ್ನು ತನ್ನ ತಾಯಿಯು ತನ್ನ ಹಿನ್ನೆಗೆ ನೀಡಿರುತ್ತಾರೆಂದು 4 ನೇ ಪ್ರತಿವಾದಿಯರು ರುಜುವಾತುಪಡಿಸುವರೇ ?
- 3) ಈಗಾಗಲೇ ದಾವಾಸ್ತಿಗಳನ್ನು ತಮ್ಮ ತಾಯಿಯವರು ಅವರ ಜೀವಿತ ಕಾಲದಲ್ಲಿ ಪಾಲು ಮಾಡಿಕೊಟ್ಟಿರುತ್ತಾರೆ ಎಂದು 4 ನೇ ಪ್ರತಿವಾದಿಯರು ರುಜುವಾತುಪಡಿಸುವರೇ ?

- 4) ಸದರಿ ದಾವೆಯಲ್ಲಿ ಕೋರಿರುವಂತೆ ದಾವಾಸ್ತಿಯಲ್ಲಿ 1/9 ನೇ ಹಿಸ್ಸೆಯನ್ನು ಪಡೆಯಲು ವಾದಿಯು ಅರ್ಹರೇ ?
5) ಆದೇಶ ವ ಡಿಕ್ರಿ ಎನು ?

15. In order to prove the above issues, plaintiff is examined as Pw.1 and got marked documents at Ex.P1 to P13. Defendant No.4 is examined as Dw.1 and got marked six document at Ex.D1 to D6.

16. Heard arguments. Perused the documentary and oral evidence on both side.

17. My answer to the above issues are as follows:

Issue No.1 : In the negative.

Issue No.2 to 4: Does not survive for consideration.

Issue No.5 : As per final order for the following:

REASONS

18. **Issue No.1 :-** The plaintiff has filed this suit for partition and separate possession against the defendants. Contention of the plaintiff is that suit schedule properties are the ancestral joint family properties of plaintiff and defendants and till today they are not divided among the family members. Suit properties are two landed properties ie Sy.No.771/1 measuring 4 acres 11 guntas and land Sy.No.773/1 measuring 3 acres 38 guntas and one house property bearing T.M.C.No.8-1-82, 8-1-83, 8-1-84 all situated at

Aland, Tq.Aland, Dist Kalaburagi. Thus the plaintiff is claiming his 1/9th share in the suit schedule properties.

19. Defendants No.1, 5 and 8 files their written statement/counter claim contending that, their 1/9 each share have to be allotted. Defendant No.6 and 7 have also filed written statement but they specifically stated in their written statement that, they do not want any share in the suit properties.

20. Whereas, the contesting defendant No.4 has filed his detailed written statement contending that, suit house property is the self acquired property of the mother of the plaintiff and defendants ie Shivagangawwa, hence the plaintiff and other defendants have no right or interest in the house property. This defendant specifically contended that, there was already oral partition took place in the year 2002 among the parties to the suit. In the said oral partition suit house was allotted to defendant No.4, lands were allotted to plaintiff and properties situated at Bangaluru were allotted to defendant No.1 and 6. Sisters not claimed share in the suit properties in oral partition. The one more specific defence of this defendant is that, there are house properties situated at Bangaluru, which are also the

ancestral joint family properties, which have been allotted to the defendant No.1 and 6 in the oral partition took place in the year 2002.

21. In support of the claim of plaintiff, he himself examined as Pw.1 and reiterated his plaint averments in his examination in chief. The counsel for contesting defendant No.4 has cross examined the defendant No.4. In the cross examination Pw.1 has given the following admissions ;

“ಲಕ್ಷ್ಮಣ ಮತ್ತು ಶಶಿಕಾಂತ ಅವರು ಅಣ್ಣ-ತಮ್ಮಂದಿರು ಅವರು 25-30 ವರ್ಷಗಳಿಂದ ಬೆಂಗಳೂರಿನಲ್ಲಿ ವಾಸ ಮಾಡುತ್ತಾರೆ....”

“ಲಕ್ಷ್ಮಣ ಮತ್ತು ಶಶಿಕಾಂತರವರ ಹೆಸರಿನಲ್ಲಿ ಮನೆ ಇರುತ್ತದೆ. ಲಕ್ಷ್ಮಣ ಮತ್ತು ಶಶಿಕಾಂತಗೆ ಸೇರಿದ ಮನೆಯಲ್ಲಿ ನನಗೆ ಪಾಲು ಅಂತ ಹೇಳಿ ನಂತರ ಸಾಕ್ಷಿ ಮುಂದುವರಿದು ಬೇಕಾಗಿಲ್ಲ ಎಂದು ಹೇಳುತ್ತಾರೆ....”

“ಈ ದಾವೆಯಲ್ಲಿ ಪ್ರತಿವಾದಿ 1 ಮತ್ತು 6 ರ ಮನೆಯನ್ನು ಈ ದಾವೆಯಲ್ಲಿ ನಾನು ಸೇರಿಸಿರುವುದಿಲ್ಲ.”

22. On carefully going through the above said admitted facts in the cross examination of Pw.1 it can be safely gather that, there are some more ancestral joint family properties exists at Bangaluru. The counsel for defendant No.4 put these suggestion to the plaintiff to

extract his mouth that there are some more properties of ancestral properties situated at Bangaluru and which are standing in the name of defendant No.1 and 6. Looking to the above admissions, the plaintiff has neither denied the existence of the properties at Bangaluru nor it is contended that the properties situated at Bangaluru are the self acquired properties of the defendant No.1 and 6.

23. In support of this defence the defendant No.4 has examined as Dw.1 and reiterated his contentions taken in the written statement. Though the counsel for plaintiff has cross examined the Dw.1, but it is not worthful to the case of plaintiff. In support of the contention that, one of the joint family property is situated at Bangaluru in the name of defendant No.1, the defendant No.4 has filed the Self Assessment of property tax form/return pertaining to the Khata No.424/44, which is standing in the name of defendant No.1. It is surprise to note that, though the defendant No.1 has appeared before the court and filed written statement, but has neither denied the contention of defendant No.4 that suit is bad for non inclusion entire

joint family properties, nor given any explanation such as said property is his exclusive owned property.

24. Though the defendant No.4 in his written statement filed on 04-03-2013 has taken the contention that, suit is not maintainable for non inclusion of entire joint family properties. Neither the plaintiff nor other defendants have made effort to show that, there was no such joint family properties exists as stated by defendant No.4. The plaintiff has not examined the defendant No.1 in whose name one of the joint family property is standing. Under such circumstances and by producing the oral and documentary evidence, the defendant No.4 has established that, entire joint family properties have not been included in the suit.

25. Under such circumstances, without touching the merit of the case, I would like to draw the attention towards the judgment passed by the Hon'ble High Court of Karnataka in case of Basavanneppa S/o Ningappa and others -Vs- Shri.Ningappa S/o Irappa and others in Regular First Appeal No.3012/2011(PAR/POS) wherein at para No.14 point No.3 it is held that ;

“The the defendant has set out in the written statement that the properties which are acquired by various members of the family, which is admitted by the Pw.5 in his evidence, the properties which are standing in the name of the plaintiffs also are not made subject matter of the suit. Unless all the properties of the family are made subject matter of the suit, no effective decree for partition can be passed by the court. If any property is not included, the plaintiff has to set-out the reasons for non-inclusion of the family properties. If there are any circumstances to justify such exclusion, it has to setout. Therefore, the trial Court is justified in holding the suit is bad for non-inclusion of the family properties in the suit.”

26. The principles laid down in the above said judgment passed by the Hon'ble High Court of Karnataka are exactly applicable to the case on hand. In the present case on hand also the plaintiff has not included all the joint family properties in the suit. If any property is not included, the the plaintiff has to set-out the reasons for non-inclusion of the family properties. Herein this case the plaintiff has not at all shown any reason for excluding the suit properties situated at Bangaluru. Therefore, no effective decree for partition can be passed by this court. Thus the plaintiff has utterly failed to prove that

suit properties alone are the joint family properties of himself and defendants. Accordingly I answered this issue in the negative.

27. Issue No.2 to 4 :- In view of the negative answer to the issue No.1 and the findings in the said issue that suit is bad for non-inclusion of entire joint family properties, these issues does not survive for consideration.

28. Issues No.5 :- In view of the findings given in issue No.1 to 4, I proceed to pass the following,

ORDER

Suit filed by the plaintiff is hereby dismissed.

No order as to cost.

Draw decree accordingly.

(Dictated to the stenographer directly on computer, typed by him, corrected by me , and then pronounced in open Court, on this the 24th day of August, 2018)

(PRAKASH C.D.)
Senior Civil Judge Aland.

ANNEXURE

1. WINTSSES EXAMINED BY THE PLAINTIFFS:-

P.W.1 : Sanjeevkumar S/o Shivashankar Shakapure.

2. DOCUMENTS MARKED BY THE PLAINTIFFS:-

- Ex.P1 : RoR of land Sy.No.773/1.
Ex.P2 : RoR of land Sy.No.771/1.
Ex.P3 to 5 : Certified copy of Tax Khata Extract.
Ex.P6 & 7 : RoR of land Sy.No.773/1 & 771/1.
Ex.P8 : Certified copy of check slip in
O.S.No.130/2003.
Ex.P9 : Certified copy of plaint in O.S.No.130/2003
Ex.P10 : Certified copy of compromise application.
Ex.P11 : Certified copy of decree in
O.S.No.130/2003
Ex.P12 & 13: Certified copies of Vakalaths.

3. WITNESSES EXAMINED BY THE DEFENDANTS:-

- Dw.1. : Shivanand Shivashankar Shakapure.

4. DOCUMENTS MARKED BY THE DEFENDANTS:-

- Ex.D1 & 2 : Original sale deeds.
Ex.D3 & 4 : RoRs
Ex.D5 : Certified copy of decree in O.S.No.130/2003.
Ex.D6 : Self Assessment of Property Tax form/return.

Senior Civil Judge Aland.