

KAKB210005712022



**IN THE COURT OF SENIOR CIVIL JUDGE AT  
ALAND, KALABURAGI DISTRICT**

**PRESENT**

**SRI. S.M. ARUTAGI.,**  
B.Com., LLB., (Spl),  
**SENIOR CIVIL JUDGE, ALAND**

**DATED THIS 02<sup>nd</sup> DAY OF DECEMBER 2023**

**O.S. No.128/2022**

**Plaintiffs...**

1. Zareena W/o Shabeer Ahmad Sayyad, Age: 52 Years, Occ: Household Work, R/o 51, Near Modi Masjeed, Modikhana, Solapur. (Maharashtra).
2. Abdul Gani S/o Karim Saheb Shaikh, Age: 78 Years, Occ: R/o 51, Modikhana, Near Pach Kandil, Solapur. (Maharashtra).
3. Bawalal S/o Karim Saheb Shaikh, Age: 72 Years, Occ:



R/o H.No.51, Near Modi  
Masjeed, Modikhana, Nnear  
Pachchapeth Kandil, Solapur.

(By Sri. B.A. Deshpande, Advocate)

**V/s**

**Defendant...**

Abdul Sattar S/o Hussainsab  
Shaikh, Age: 48 Years, Occ:  
Agriculture, R/o Nimbarga, Tq.  
Aland, Dist. Kalaburagi.

(Defendant Placed Exparte)

Date of Institution of suit.	21-11-2022.
Nature of Suit.	Partition & separation possession.
Date of commencement of recording of the Evidence.	13-07-2023.



Date of closure of evidence.	13-07-2023.		
Date of disposal.	02-12-2023		
Total Duration.	Years	Months	Days
	01	00	11

**(S.M. ARUTAGI)**  
Senior Civil Judge,  
Aland.

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

This is a suit instituted by the plaintiffs for the relief of partition and separate possession against the defendant with respect to the suit schedule property and other reliefs.

2. It is the case of the plaintiffs' that the plaintiff No.2 and 3 are real brothers, the plaintiff



No.1 is daughter of late Abdul Razzak, who is the elder brother of plaintiff No.2 and 3. The defendant is cousin brother of the plaintiffs. In order to show the detail relationship, they have produced genealogy tree. The suit schedule property bearing Sy.No.4/4 measuring 04 Acres 13 Guntas, situated at Nimbarga village is Matruka property of the parties to the suit. The original common ancestor by name Nabisab had 02 sons by name Khasimsab and Hussainsab and both have been died leaving behind their legal heirs and out of them, Khasimsab is died leaving behind 03 sons by name Abdul Razzak, Abdul Gani and Bawalal, out of them Abdul Razzak is also expired and he is survived by Zareena,



Parveen, Javed and Kaleem, but other three issues of late Abdul Razzak by name Javed. Kaleem and Parveen are not prosecuting in this case, because they have authorized the plaintiff No.1 to claim their share in the suit property.

3. It is further averred that the name of the plaintiffs and defendant are mutated in the suit property in view of mutation No.T-177/20-21 dated 30-03-2021 as joint co-owners in possession of the suit property. In order to get the share of the plaintiffs, separated the suit property by amicable settlement. The plaintiff No.3 filed an application an on-line on 25-08-2022 after depositing necessary fees, but due to non co-operation of the defendant, the survey



work could not be done. The plaintiffs together entitled  $\frac{1}{2}$  share in the suit schedule property and also, the defendant is entitled for  $\frac{1}{2}$  share in the suit property. Due to non co-operation of defendant, the plaintiffs have filed this suit. The defendant without knowledge of the plaintiffs and behind back, tried to create encumbrance and tried to alienate the suit property to the third person and therefore, they constrained to file the present suit.

4. On issuance of suit summons, the defendant did not received the same and the plaintiffs have taken coercive steps by way of paper publication, but the defendant remained



absent before this court and he was placed  
exparte.

5. Thereafter, in order to substantiate the case of the plaintiffs, the plaintiff No.2 got himself examined as PW.1 and exhibited 03 documents marked as Ex.P.1 to P.3 and closed their side evidence.

6. Heard arguments on the side of plaintiffs counsel.

7. The points that arise for the consideration of this court are as follows:

**POINTS**

1. *Whether the plaintiffs prove that themselves and defendant are in joint possession and enjoyment of the suit*



*schedule property as a tenant in common and it is Matruka property?*

2. *Whether the plaintiffs are entitled for their 1/2 share in the suit schedule property?*

3. *What order or decree?*

8. My findings to the above said points are as follows:

Point No.1: In the affirmative.

Point No.2: In the affirmative.

Point No.3: As per final order for the following:-

### **REASONS**

9. **Points No.1 & 2:-** Since, both points are inter related to each other, they are taken up together in order to avoid repetition of facts.

10. In order to prove the above said points,



the plaintiff No.2 himself got examined as PW.1 by filing affidavit in lieu of examination chief and he reiterated the entire plaint averments and in support of their case, got produced 03 documents marked as Ex.P.1 to P-3. Ex.P.1 is certified copy of RTC pertaining to the suit property. Ex.P-2 is certified copy of computerized mutation and Ex.P-3 is certified copy of Form No.11-E.

11. On looking to the evidence of PW.1 and contents of Ex.P1 to P3, it clearly shows that the averments made in the evidence of P.W.1 are clearly substantiated by the contents of the document. Despite of taking coercive steps by way of paper publication, the defendant remained absent before this court, which clearly discloses



that the defendant has not challenged the contention of the plaintiffs and the contents of the documents by adducing contra evidence or by producing any documents on their behalf. There is no contra evidence or documents to disbelieve the contention taken by the plaintiffs. Hence, it clearly shows that the plaintiffs are together entitled for their half share in the suit schedule property. Hence the plaintiffs have proved the point No.1 and 2 to the satisfaction of this court. Accordingly, I answer **point No.1 and 2 in the affirmative.**

12. **Point No.3:-** For the foregoing discussions and reasons assigned by me, I proceed to pass the following:-



**ORDER**

The suit of the plaintiffs is hereby decreed with costs.

The plaintiffs are together entitled for partition and separate possession of their  $\frac{1}{2}$  share in the suit schedule property by metes and bounds.

The defendant is entitled for remaining  $\frac{1}{2}$  of the suit schedule property by meets and bounds.

The suit schedule property shall be treated as part and partial of the decree.



Draw preliminary decree  
accordingly.

(Dictated to the stenographer, typed by her, corrected by me, and then pronounced in open Court, on this the 02<sup>nd</sup> day of December 2023)

**(S.M. ARUTAGI.)**  
Senior Civil Judge,  
Aland.

**ANNEXURE**

**1. WINTSSES EXAMINED BY THE PLAINTIFF :-**

PW.1: : Abdul Gani S/o Khasim Saheb  
Shaikh.

**2. DOCUMENTS MARKED BY THE PLAINTIFF:-**

Ex.P1 : C C of RTC.  
Ex.P2 : C C of Mutation.  
Ex.P3 : C C of Form No.11-E.

**3. WITNESSES EXAMINED BY THE DEFENDANTS:-**



-- Nil --

**4. DOCUMENTS MARKED BY THE DEFENDANTS:-**

-- Nil --

Senior Civil Judge,  
Aland.

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