



IN THE COURT OF SENIOR CIVIL JUDGE AT AFZALPUR

PRESENT

**Sri. Mahammad Anwar Hussain Mogalani,
B.Sc.LLB (Spl)
SENIOR CIVIL JUDGE, AFZALPUR.**

DATED THIS 21st DAY OF OCTOBER 2022

O.S. No.31/2021

Plaintiff...

Bhemrao S/o Khanappa Bandagar,
Age : 38 Years, Occ : Agriculture,
R/o Udachan Hatti, Tq.Afzalpur,
Dist : Kalaburagi.

(By Sri.S.S.Patil Advocate)

V/s

Defendants...

- 1) Andappa S/o Ramchandra Bandagar,
Age 60 years, Occ : Agriculture,
- 2) Beerappa S/o Kashappa Bandagar,
Age : 35 years, Occ : Agriculture,
- 3) Anil S/o Kashappa Bandagar,
Age : 30 Years, Occ : Agriculture.

All R/o Village Udachan Hatti, Tq.Afzalpur,
Dist : Kalaburagi.

(D1 b y Sri.S.K.Pujari Advocate,
D2 & D3 Exparte)



1. Date of institution of suit - 19-07-2021
2. Nature of suit - Suit for partition, separate possession and Injunction.
3. Date of recording evidence - 15-10-2022
4. Date of closure of evidence - 15-10-2022
5. Date of disposal - 21-10-2022
6. Total duration - years / months/ days
01 / 03 / 02

J U D G M E N T

Plaintiff has filed this suit against the defendants for partition and separate possession.

2. Suit properties are as under;

1) Land Sy.No.372/A measuring 16 acres 16 guntas, situated at village Udachan, Tq.Afzalpur, Dist : Kalaburagi.

2) Land Sy.No.263/5 measuring 8 acres 19 guntas situated at village Udachan, Tq.Afzalpur, Dist : Kalaburagi.

3) Land Sy.No.263/2/A measuring 8 acres 19 guntas situated at village Udachan, Tq.Afzalpur, Dist : Kalaburagi.



3. That the defendant No.1 is the uncle of the plaintiff and defendant No.2 and 3 are the children of deceased Uncle by name Kashappa who has died, and defendant No.4 is brother.

4. That the suit lands are the ancestral, joint family properties of plaintiff and defendants. Previously the said lands were standing in the name of father of plaintiff and defendant No.1.

5. It is further contended that in the year 1973-74 the suit land Sy.No.263/2A was measuring 8 acre 19 guntas and same was standing in the name of father of plaintiff and land Sy.No.272/Aa was standing in the name of defendant No.1 and the same was continued till today.

6. It is further contended that, after the demise of the father of plaintiff the defendant No.1 being the elder of the family without the knowledge and consent of the



plaintiff has got mutated all the suit lands in his name till today the suit lands are standing in the name of defendant No.1. The land Sy.No.263 was totqally measuring 16 acres 38 guntas.

7. It is further contended that since from the death of father of plaintiff and defendant No.1 used to give share in the yield of the suit properties to the plaintiff and defendants No.2 to 4.

8. That very recently the defendant No.1 stopped to provide the share in the yield grown in the suit lands. The plaintiffs requested the defendants to partition the suit land and provide his father's 1/3rd share in the suit lands, but the defendant No.1 postponed the same for one or the other reason.

9. That the defendant No.1 taking the undue advantage of RoRs of suit land standing in his name is trying to alienate the suit properties. After knowing the



said fact the plaintiff approached the defendant No.1 and requested to allot his share, but the defendant No.1 has refused to allot his legitimate share. Hence the plaintiff filed the present suit for partition and separate possession.

10. In pursuance of suit summons the defendant No.1 appeared before the court through his counsel, but has not filed his written statement. In spite of service of suit summons, defendants No. 2 to 4 have not appeared before the court, hence they have been placed *ex parte*.

11. In view of the above pleadings of the plaintiff, the points that arise for my consideration are as under ;

POINTS

1. Whether the plaintiff proves that, the suit schedule properties are the ancestral joint family properties of plaintiff and defendants ?
2. Whether the plaintiff is entitled for the relief as claimed in the plaint ?
3. What order or decree ?



12. Heard arguments on behalf of plaintiff. Perused the oral and documentary evidence available on record.

13. In order to prove the case, plaintiff is examined as PW-1 and got marked documents at Ex.P.1 to P.8 and closed the side. On the other hand defendants have not led any oral or documentary evidence on their behalf.

14. My answers to the above 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

15. **POINTS No.1 and 2** :- The plaintiff has filed the suit for partition and separate possession in respect of suit schedule properties. Suit schedule properties are



the three landed properties Sy.No.372/A, measuring 16 acres 16 guntas, Sy.No.263/5 measuring 8 acres 19 guntas, and land Sy.No.263/2/A measuring 8 acres 19 guntas, all situated at village Udachan, Tq.Afzalpur, Dist : Kalaburagi.

16. It is the contention of the plaintiff that above suit schedule properties are the ancestral joint family properties of plaintiff and defendants. After the demise of the father of plaintiff, the defendant No.1 being the elder of the family without knowledge and consent of the plaintiff has got mutated all the suit schedule properties in his name and till today the suit schedule properties are standing in the name of defendant No.1.

17. It is further alleged by the plaintiff that, recently the defendant No.1 has stopped to give share in the food grains grown in the suit schedule properties. As such the plaintiff has asked to give his share in the



suit schedule properties, but the defendant No.1 is postponing to partition in the suit lands for one or the other reasons. Hence, the plaintiff has filed the suit for partition.

18. After institution of the suit, suit summons were issued to all the defendants. In pursuance of suit summons the defendant No.1 appeared through his counsel, but inspite of giving sufficient opportunity the defendant No.1 has not filed written statement and also not cross examined the plaintiff who is examined as Pw.1.

19. On the other hand, in spite of service of suit summons remaining defendants have not at all defended their case. Thus, the defendants inspite of knowing all the facts of suit, have not at all resisted the claim of plaintiff.



20. Further, the plaintiff in order to establish his case that the suit schedule properties are the ancestral joint family property has examined himself as Pw.1 and has reiterated the entire plaint averments in his examination-in-chief. The plaintiff in support of his pleading as well as in his chief examination has produced the documents at Ex.P1 to P8. Ex.P1 is the Form No.L shows that the entire suit properties are divided only between two brothers. Ex.P2 to 8 are the record of rights of suit lands which are standing in the name of defendant No.1 and father of plaintiff. The genealogy tree shows that the plaintiff is the son of Khanappa.

21. The defendant No.1 in whose name the suit property was standing, though appeared before the court through his counsel, but has not contested the case by filing the written statement. Therefore, under the facts



and circumstance of the case and in the absence of the defendants, the court can presume that, the defendants have no objection for the partition in the ancestral joint family properties. Thus, the plaintiff through his oral and documentary evidence has proved that the suit properties are the ancestral and joint family properties of plaintiff and defendants and the plaintiff being the coparcener of the joint family is entitled for the partition in the share of his father Khanappa S/o Ramachandra. Accordingly, I answered points No.1 and 2 in the affirmative.

22. **POINT No.2** :- As per the reasons stated in the point No.1, I proceed to pass the following ;

ORDER

The suit of the plaintiff is hereby decreed.

Award $\frac{1}{2}$ share to the plaintiff out of $\frac{1}{3}$ rd share of his father in the suit schedule properties and put the plaintiff in his separate



possession of ½ share of 1/3rd share of his father in the suit properties and effect the partition by meets and bounds.

By looking into the facts and circumstances involved in the case no order as to costs.

Draw preliminary decree accordingly.

(Dictated to the stenographer directly on computer, typed by him, corrected by me, and then pronounced in open Court, on this the 21st day of October 2022)

(Mahammad Anwar Hussain Mogalani)
Senior Civil Judge, Afzalpur.

ANNEXURE

List of witnesses examined on behalf of plaintiff :-

Pw.1 : Bheemrao S/o Khanappa Bandagar.

List of documents marked on behalf of plaintiff :-

Ex.P1 : Form No.L.

Ex. P2 to 8 : 7 RoRs.

List of witnesses examined on behalf of defendants :- -Nil-

List of documents marked on behalf of defendants :- -Nil-

**Senior Civil Judge,
Afzalpur.**