



Presented on	10-10-2023
Registered on	11-10-2023
Decided on	29-01-2025
Duration	1 Year, 03 Months, 19 Days

IN THE COURT OF THE SENIOR CIVIL JUDGE AND J.M.F.C.,
AFZALPUR

Present: Shri. Vinayak Mayannavar,
B.A.,LL.B.
Senior Civil Judge & J.M.F.C., Afzalpur.

Dated this the 29th day of January - 2025

Original Suit No.96/2023

Plaintiffs:

- 1] Rama D/o Prahaladrao Kulkarani,
W/o Raghavendra Puranik,
Age: 53 years, Occ: Household work,
R/o: H.No.5-78/1, Road No.10,
Bhavani Nagar, Hyderabad,
State : Telangana.



- 2] Uma D/o Prahaladrao Kulkarani,
W/o M.A. Vithal,
Age: 50 years, Occ: Household work,
R/o: C/202, Manorath CHS, Sopara Road,
Near Marathi School, Bolinj Virar (West),
State : Maharashtra.

[By Shri R.K. & P.R.P. Advocates]

V/s

Defendants:

- 1] Govindaraj Kulkarni
S/o Prahaladrao Kulkarani,
Age: 58 years, Occ: Agriculture & Business,
R/o: Plat No.9036, Block No.IX,
Ground Floor, Janapriya Mahanagar,
Meerpet village, Saroor Nagar Mandal,
R.R. District, Hyderabad,
State : Telangana.



- 2] Anuradhamma W/o Govindaraj Kulkarni
Age: 52 years, Occ: Agriculture & Business,
R/o: Plat No.9036, Block No.IX,
Ground Floor, Janapriya Mahanagar,
Meerpet village, Saroor Nagar Mandal,
R.R. District, Hyderabad,
State : Telangana.

[By Shri K.V & M.S.P. Advocates]

J U D G M E N T

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

2. The brief facts of the plaintiffs' case are as under:

The plaintiffs are the sisters of the defendant No.1. The defendant No.2 is the wife of the defendant No.1. The suit



properties are the ancestral and joint family properties of the plaintiffs and the defendant No.1. The suit properties were earlier standing in the name of the father of the plaintiffs by name Prahaladrao Kulkarni. The defendant No.1 and 2 have illegally mutated their names to the suit properties. The father of the plaintiffs died on 23-07-2018. The defendants have denied the rights of the plaintiffs in the suit properties on 02-10-2023.

3. It is further case of the plaintiffs that, the plaintiffs are entitled for 1/3rd share each in the suit properties bearing survey No.83 measuring 21 acre 31 gunta of land situated at Guddewadi village, survey No.41 measuring 28 acre 36 gunta of land situated at Kolanoor Village, survey No.43 measuring 5 acre 24 gunta of land situated at Kolanoor village and house property bearing flat No.9036 situated at Meerpeth Village of Hyderabad and house No.3-3-63/D situated at Gokule Nagar



of Hyderabad. On the said material grounds the plaintiffs have prayed for passing a decree in their favour.

4. In pursuance of the suit summons the defendants have appeared through their counsel. The defendant No-1 has filed his written statement by denying the case of the plaintiffs. The defendant No.2 by filing a memo has adopted the written statement of the defendant No.1 as her written statement.

5. The defendants have contended that, the defendant No.1 is the absolute owner of the suit item No.2 and 3 properties bearing survey No.41 and 43. One Venkatesh Joshi was the grandfather of the plaintiffs and the defendant No.1. The Venkatesh Joshi was having 3 sons by name Hanumantrao, Prahaladrao and Keshav and 2 daughters by name Gangabai, Ambakka @ Prabhavati. The suit of the plaintiffs is barred by law of limitation. The suit item No.1 and 3 properties bearing survey No.83 and 43 are also standing in



the name of Government of Karnataka. The Government is also a necessary party in the present suit. The plaintiffs have not included the brothers and sisters of their father in the present suit. Hence the suit of the plaintiffs is bad for non joinder of necessary parties. On the said material grounds the defendants have prayed for dismissal of the suit of the plaintiffs.

6. On the basis of contentions of the parties following issues were framed by this court: -

ISSUES

- 1] Whether the plaintiffs prove that, the plaintiffs and defendant No.1 are the Hindu joint family members ?



- 2] Whether the plaintiffs prove that, the suit properties are the ancestral and joint family properties of the plaintiffs and the defendant No.1 ?
- 3] Whether the defendants prove that, the suit item No.1 and 3 properties are also standing in the name of the Government and the Government is also a necessary party to the present suit and the suit of the plaintiffs is bad for non-joinder of necessary parties ?
- 4] Whether the defendants prove that, the brothers and sisters of the father of the plaintiffs by name (1) Hanumantarao Joshi, (2) Keshav Joshi, (3) Gangabai and (4) Ambakka @ Prabhavati are also necessary parties to the present suit and the suit of the



plaintiffs is bad for non-joinder of necessary parties ?

- 5] Whether the plaintiffs are entitled for the share in the suit properties ? If so to what extent ?
- 6] Whether the plaintiffs are entitled for the reliefs claimed by them ?
- 7] What order or decree?

7. The plaintiffs in order to prove their case got examined the plaintiff No.1 as PW-1. They got marked in all 77 documents as per Ex.P-1 to P-77. The plaintiffs also got examined the plaintiff No.2 as PW-2 and later got discarded the evidence of the PW-2.



8. The defendants have not led their evidence in support of their case. The defendants in the cross examination of the PW-1 got marked in all 10 documents by confrontation as per Ex.D-1 to D-10.

9. Heard the arguments. Considered the written arguments filed by the learned advocate for the plaintiffs and defendants.

10. The learned advocate for the defendants has relied upon the following decisions in support of his arguments.

Civil Appeal No.878/2009, dated 04-01-2023 in the case of Smriti Debbrama since dead by her Lrs V/s Prabha Ranjan Debbrama and others Supreme Court

RSA No.35/2012, dated 15-05-2022 High Court of Gouhati.



11. On consideration of the materials placed before me on record, my findings to the above issues are as under: -

Issue No.1 :- In the affirmative.

Issue No.2 :- Partly in the affirmative.

Issue No.3 :- In the negative.

Issue No.4 :- In the negative.

Issue No.5 :- Partly in the affirmative.

Issue No.6 :- In the affirmative.

Issue No. 7 :- As per the final order, for the following.

REASONS

12. Issue No: -1 to 6. These issues are interlinked together and required to be answered on the basis of same materials.



Hence in order to avoid repetition, these issues are taken together for consideration.

13. The PW-1/plaintiff No.1 has deposed in support of the case of the plaintiffs. She has deposed that, Govindrao Kulkarni has adopted her father by name Prahaladrao. She does not know the natural father of her father. Her father went in adoption, when he was child. She has denied the case of the defendants and shown her ignorance about the case of the defendants. She has admitted that, in Ex.P-15 death certificate her grandfather name is mentioned as Venkatesh and her grandmother name is mentioned as Laxmibai. She has admitted that, in survey No.83 an area of 31 gunta of land is acquired by the Government. Padmavati is her grandmother.

14. In the documentary evidence the plaintiffs have produced RTC of suit item No.1 property bearing survey



No.83 measuring 21 acre 31 gunta of land as per Ex P-1 to 3. From the said documents it appears that, the suit item No.1 property is standing in the name of defendant No.2 for 21 acre of land. The remaining 31 gunta of land is standing in the name of Karnataka Niravari Nigam reporting acquisition of the said land.

15. The Ex.P-4 is the RTC of the suit item No.3 property bearing survey No.43 measuring 5 acre 24 gunta of land standing in the name of the defendant No.1.

16. The Ex.P-5 and P-6 are the RTC of suit item No.2 property bearing survey No.41 measuring 28 acre 30 gunta of land standing in the name of the defendant No.1.

17. Ex.P-9 is the certified copy of rectification deed dated 19-06-1985. From the said document it appears that, the father of the plaintiffs has purchased plot No.67/B property



in survey No.4 situated at Ramanathpur. The Ex.P-8 document shows that, the said property is related to suit item No.5 property bearing No.63/D.

18. The Ex.P-11 is the certified copy of sale deed dated 26-04-1968. From the said document it appears that, the father of the plaintiffs has purchased plot No.67/B. The Ex.P-10 is the encumbrance certificate of suit item No.5 property.

19. The Ex.P-13 is the encumbrance certificate of plot No.9030. From the said document it appears that in the year 2008 the name of the father of the plaintiffs was mutated to the said property. The plaintiffs have filed the present suit with respect to suit item no-4 property bearing flat number 9036. The plaintiffs have not produced any documents with respect to the said suit item no-4 property. The plaintiffs have produced one encumbrance certificate with respect to flat



number 9030. The said document does not tally with the suit item number 4 property bearing flat number 9036.

20. The Ex.P-14 is the death certificate of Pramila K W/o Prahalad K. From the said document it appears that, the mother of the plaintiffs died on 31-05-2005. The Ex.P-15 is the death certificate of father of the plaintiffs. From the said document it appears that, the father of the plaintiffs was died on 23-07-2018. The grandfather name of the plaintiffs was mentioned as Venkatesh in the said documents.

21. The Ex.P-16 is the family members' certificate issued by the DRDO of Ministry of Defense, Government of India. From the said document it appears that, the plaintiffs and defendant No.1 are shown as family members of the deceased Prahalad who was a technical officer in the said department.



22. The Ex.P-17, 18, 20, 21, 22 and P-23 and P-33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47 are the RTC of suit item No.3 property bearing survey No.43. From the said documents it appears that, the said land was earlier standing in the name of father of the plaintiffs and the same was mutated in the name of the defendant No.1.

23. The Ex.P-19, 23,24, 25, 26, 27, 28 and 31,32 and Ex.P-48 to P-62 are the RTC of suit item No.2 property bearing survey No.41 measuring 28 acre 36 gunta of land. From the said documents it appears that, the said land was earlier standing in the name of father of the plaintiffs and the same was mutated in the name of the defendant No.1.

24. The Ex.P-63 to Ex.P-77 are the RTC of suit item No.1 property bearing survey No.83 measuring 21 acre 31 gunta of land. From the said documents it appears that, the said land



was earlier standing in the name of father of the plaintiffs and the same was mutated in the name of the defendant No.2.

25. The Ex.D-1 is the RTC of suit item No.2 property bearing survey No.41 standing in the name Padmavati W/o Govindrao for the year-1983 to 1987.

26. The Ex.D-2 is the RTC of suit item No.3 property bearing survey No.43 from the year-1983 to 1988 standing in the name of Padmavati W/o Govindrao.

27. The Ex.D-3 is the RTC of suit item No.1 property bearing survey No.83 from the year-1978 to 1983 standing in the name of Padmavati W/o Govindrao.

28. The Ex.D-4 is the income tax return challan. From the said document it appears that, the father name of the Prahalad was mentioned as Venkatesh in the year-2001.



29. The Ex.D-5 is the Adhar card of the Prahaladrao Kulkarni.

30. The Ex.D-6 is the Election card of Prahalad Kulkarni. In the said document the name of his father was shown as Venkatesh Kulkarni.

31. The Ex.D-7 is the PAN card of Prahalad. In the said document the name of the father of the Prahalad was mentioned as Venkatesh.

32. The Ex.D-8 is the marriage invitation card of plaintiff No.2. In the said document it is mentioned that, the plaintiff No.2 is the daughter of Prahalad Joshi.

33. The Ex.D-9 is the Adhar card of Keshav S/o Venkatesh Joshi.



34. The Ex.D-10 is the marriage invitation card of daughter of Keshav Joshi. In the said document the name of brother of the Keshav is mentioned as Prahalad Joshi.

35. On perusal of the materials on record it appears that, plaintiffs and defendant No.1 are the children of Prahalad Rao Kulkarni. The defendants have not specifically denied the said relationship. The defendants have come with a case that, grandfather name of the plaintiffs was Venkatesh Joshi. The plaintiffs in their evidence have specifically submitted that, their father Prahalad Rao gone in adoption to Govindrao during his child hood.

36. The plaintiffs have produced materials to show that, the suit item number 1 to 3 and 5 properties were standing in the name the father of the plaintiffs by name Prahaladrao Kulkarni. The father of the plaintiffs died on 23-07-2018 by leaving behind the plaintiffs and defendant No.1 and the suit



item number 1 to 3 and 5 properties. Hence considering the materials on record it appears that, the plaintiffs and defendant No.1 are the Hindu joint family members and the suit item number 1 to 3 and 5 properties are the joint family properties of the plaintiffs and defendant No.1. The plaintiffs have not produced any materials with respect to suit item number 4 property. In the absence of any materials it is difficult to hold that the suit item no-4 property is the ancestral and joint family property of the plaintiffs and defendant no-1. The decisions relied upon by the defendants are not helpful to the defendants in the present case. The facts and circumstances in the said case are different from the present case. The plaintiffs have made out a probable case in their favour in the present case apart from the weakness of the defendants by producing the materials in support of their case. Hence I answered issue No.1 in the affirmative and issue No-2 partly in the affirmative.



37. The defendants have contended that, the suit item No.1 and 3 properties are also standing in the name of the Government of Karnataka. The RTC of the suit item No.1 property bearing survey No.83 shows that, 31 gunta of land is acquired by the Government in the year-2021. The remaining 21 acre of land is standing in the name of the defendant No.2. The suit item No.3 property measuring 5 acre 24 gunta of land is standing in the name of defendant No.1. In view of acquisition of 31 gunta of land by the Government the parties can be granted share in the compensation amount. The Government appears to be a formal party in the present suit. The plaintiffs have filed the present suit for the relief of partition and separate possession. Hence the suit of the plaintiffs cannot be said to be bad for non joinder of Government of Karnataka as party in the present suit. Hence I answered issue No.3 in the negative.



38. The defendants have contended that, the brothers and sisters of the father of the plaintiffs are also necessary parties in the present suit. On perusal of the records it appears that, the suit properties were earlier standing in the name of wife of Govindrao. The same are mutated in the name of father of the plaintiffs by name Prahaladrao. The same are thereafter, mutated in the name of defendants. The PW-1 has specifically deposed that, her father gone in adoption during his childhood to the Govindrao. The plaintiffs have filed the present suit claiming their rights in the properties standing in the name of their father. The defendants have not produced any materials to show that, the suit of the plaintiffs can be said to be bad for non joinder of necessary parties. The brothers and sisters of the Prahaladrao are not the necessary parties to the present suit. Hence I answered issue No.4 in the negative.

39. The plaintiffs and defendant No.1 are the children of Prahaladrao Kulkarni. Hence they are entitled for 1/3rd share



each in the suit item no-1 to 3 and 5 properties under section 8 of Hindu succession Act. Hence the plaintiff No.1 is entitled for 1/3rd share in the suit item no-1 to 3 and 5 properties. The plaintiff No.2 is entitled for 1/3rd share in the suit item no-1 to 3 and 5 properties. The defendant No.1 is entitled for 1/3rd share in the suit item no-1 to 3 and 5 properties. The defendant No.2 being the wife of the defendant No.1 she is not entitled for any share in the suit properties. The plaintiffs have not produced any materials to show their rights with respect to suit item no-4 property bearing flat number 9036. Hence the plaintiffs are not entitled for any share in the suit item number 4 property. Hence I answered issue No.5 partly in the affirmative.

40. The plaintiffs have shown that, the suit item no-1 to 3 and 5 properties were belonging to their father. The father of the plaintiffs died living behind the plaintiffs and defendant No.1 and the suit item no-1 to 3 and 5 properties. The



plaintiffs have proved their rights in the suit item no-1 to 3 and 5 properties. The defense of the defendants that, the grandfather name of the plaintiffs is Venkatesh Joshi and 31 gunta of land is standing in the name of the Government are not come in the way to grant the relief to the plaintiffs in the present suit. The plaintiffs are entitled for the relief of partition with respect to 21 acre of land in suit item No.1 property bearing survey No.83. The plaintiffs are entitled for 1/3rd share each in the compensation amount of 31 gunta of land acquired by the Karnataka Niravari Nigama. Hence considering the material on record I am of the opinion that, the plaintiffs are entitled for the reliefs claimed by them in the present suit. Hence I answered issue No.6 in the affirmative.

41. Issue No.7:- In view of my findings to the above issues and discussions. I proceed to pass the following: -



ORDER

Suit of the plaintiffs is partly decreed with cost.

The plaintiff No.1 is entitled for 1/3rd share in the suit item no-1 to 3 and 5 properties.

The plaintiff No.2 is entitled for 1/3rd share in the suit item no-1 to 3 and 5 properties.

The defendant No.1 is entitled for 1/3rd share in the suit item no-1 to 3 and 5 properties.

The defendant No.2 is not entitled for any share in the suit item no-1 to 3 and 5 properties.

The plaintiffs and defendant No.1 are entitled for 1/3rd share each in the 21 acre of



land in the suit item No.1 property bearing survey No.83.

The plaintiffs and defendant No.1 are entitled for 1/3rd share each in the compensation amount with respect to 31 gunta of land in suit item No.1 property bearing survey No.83 which is acquired by the Karnataka Niravari Nigama.

The suit of the plaintiffs with respect to suit item number 4 property bearing flat number 9036 is hereby dismissed.

Office is hereby directed to draw preliminary decree accordingly.



Office is hereby directed to register the final decree proceedings on drawing the preliminary decree in the present case and put up the final decree proceedings case with the certified copy of preliminary decree and order sheet in FDP case on **03-03-2025**.

The parties are hereby directed to appear before this court on **03-03-2025** for proceeding further in the final decree proceedings without expectation of any process in the said case.

On failure to appear any of the parties the final decree case will be proceeded further in their absence.

Senior Civil Judge and JMFC.,
Afzalpur.



ANNEXURE

LIST OF WITNESSES EXAMINED ON BEHALF OF PLAINTIFFS.

PW-1 : Rama D/o Prahalad Rao Kulkarani,
W/o Raghavendra Puranik.

LIST OF DOCUMENTS EXHIBITED FOR PLAINTIFFS.

Ex.P-1 to 6 : RTCs.

Ex.P-7 : Encumbrance statement

Ex.P-8 : Market Value statement

Ex.P-9 : C.C of rectification deed dated 19-06-1985.

Ex.P-10 : Encumbrance certificate.

Ex.P-11 : C.C of Sale Deed dated 26-04-1968

Ex.P-12 : Market value statement.

Ex.P-13 : Encumbrance statement.

Ex.P-14 : Death Certificate.



- Ex.P-15 : Death Certificate.
- Ex.P-16 : Family members' certificate
- Ex.P-17 to 28 : RTCs.
- Ex.P-29 & 30 : Encumbrance certificates.
- Ex.P-31 to 77 : RTCs.

LIST OF WITNESSES EXAMINED ON BEHALF OF DEFENDANTS

-Nil-

LIST OF DOCUMENTS EXHIBITED FOR DEFENDANTS

- Ex-D-1 to D-3 : C.C. of RTCs.
- Ex-D-1(a), D-2 (a), D-3(a) : Translation of Ex.D-1 to D-3.
- Ex-D-4 : Income tax return form
- Ex-D-5 : Adhar card.
- Ex-D-6 : Election ID card.
- Ex-D-7 : Pan card



Ex-D-8 : Marriage Invitation card.

Ex-D-9 : Aadhar Card.

Ex-D-10 : Marriage Invitation card.

Senior Civil Judge and JMFC.,
Afzalpur.



(Judgment pronounced in the open court vide separate sheets)

ORDER

Suit of the plaintiffs is partly decreed with cost.

The plaintiff No.1 is entitled for 1/3rd share in the suit item no-1 to 3 and 5 properties.

The plaintiff No.2 is entitled for 1/3rd share in the suit item no-1 to 3 and 5 properties.

The defendant No.1 is entitled for 1/3rd share in the suit item no-1 to 3 and 5 properties.

The defendant No.2 is not entitled for any share in the suit item no-1 to 3 and 5 properties.



The plaintiffs and defendant No.1 are entitled for 1/3rd share each in the 21 acre of land in the suit item No.1 property bearing survey No.83.

The plaintiffs and defendant No.1 are entitled for 1/3rd share each in the compensation amount with respect to 31 gunta of land in suit item No.1 property bearing survey No.83 which is acquired by the Karnataka Niravari Nigama.

The suit of the plaintiffs with respect to suit item number 4 property bearing flat number 9036 is hereby dismissed.

Office is hereby directed to draw preliminary decree accordingly.



Office is hereby directed to register the final decree proceedings on drawing the preliminary decree in the present case and put up the final decree proceedings case with the certified copy of preliminary decree and order sheet in FDP case on **03-03-2025**.

The parties are hereby directed to appear before this court on **03-03-2025** for proceeding further in the final decree proceedings without expectation of any process in the said case.

On failure to appear any of the parties the final decree case will be proceeded further in their absence.

Senior Civil Judge and JMFC.,
Afzalpur.