

KAKB610002962023



Presented on : 12-04-2023
Registered on : 17-04-2023
Decided on : 22-03-2024
Duration : 00 years/ 11 months/ 10 days.

IN THE COURT OF SENIOR CIVIL JUDGE, JEWARGI

PRESENTS :-**Sri. Sandeep. A. Naik.** B.A., LL.B.,(Spl)
Senior Civil Judge, Jewargi.

Original Suit No.62/2023

DATED THIS THE 22nd DAY OF MARCH-2024

PLAINTIFF:

1. Neelamma W/o Late Subhash,
Age: 55 years, Occ: Agriculture.

2. Doulappa S/o Late Subhash,
Age: 35 years, Occ: Agriculture.

3. Manjunath S/o Late Subhash,
Age: 25 years, Occ: Agriculture.

4. Sanjunath S/o Late Subhash,
Age: 23 years, Occ: Agriculture,

All are R/o Jewargi (K) Village,
Tq. Jewargi, Dist. Kalaburagi.

..... (By Shri. P.M.K., Advocate)

Versus**DEFENDANTS:**

1. Girimalappa S/o Late Mareppa,
Age: 65 years, Occ: Agriculture.
R/o Jewargi (K), Tq: Jewargi,
Dist: Kalaburagi.

2. The Manager SBI Bank,
Jewargi Branch, Tq: Jewargi,
Dist: Kalaburagi.

(Case as against Def. No.2 dismissed)

**.....(D1 By. Sri. R.B.B., Advocate)
(Written statement not filed)**

Date of Institution of the Suit	12-04-2023
Nature of the Suit (Suit on Pronote, on declaration and possession and on for injunction etc.,)	Partition and Separate Possession.
Date of the commencement of recording of the evidence	20-12-2023
Date on which the Judgment was pronounced	22-03-2024
Total Duration	<u>Year/s Month/s Day/s</u> 00 11 10

(SANDEEP A. NAIK)
Senior Civil Judge & J.M.F.C.,
Jewargi.

JUDGMENT

1. The plaintiffs have filed this suit seeking the relief of partition and separate possession in respect of suit schedule properties and also to direct defendant No.2 to recover the loan amount from the share of defendant no.1 in the suit properties.

2. The suit schedule properties are the agriculture lands bearing Sy.No.90 measuring 6 Acres 14 guntas & Sy.No.89/1 measuring 4 Acres 00 Guntas situated at Jewargi (K) village, Jewargi Taluk which are having common boundaries as under:

Towards East	:	Road,
Towards West	:	Land of Nimbyanna Gouda.
Towards North	:	Land of Shivappa.
Towards South	:	Land of Durgappa Wadder.

FACTS IN BRIEF:

3. According to the plaintiffs, one Mareppa is the common ancestor and propositus of plaintiffs and defendant No.1 family. He had a wife by name Sharnamma. The said Mareppa had two sons namely Girimalappa i.e, defendant No.1 herein and Subhash. The said Subhash died leaving behind his wife Neelamma i.e., plaintiff No.1 herein and three sons namely Doulappa, Manjunath and Sanjunath i.e., plaintiffs No.2 to 4 herein respectively. The suit properties are stated to be the joint family properties. The said Mareppa was the owner of suit properties. After the death of Mareppa, defendant No.1 got

mutated his name to the suit properties being elder member of the family. However, his name was entered into the record of rights nominally for and on behalf of the family. The plaintiffs and defendant No.1 are joint owners and possessors of suit lands and are jointly cultivating the suit schedule properties and also enjoying the same but unfortunately husband of plaintiff No.1 Subhash died on 06-03-2017 and after his death plaintiffs are cultivating suit properties jointly. But in the month of September-2022, defendant No.1 sold soil of suit lands and plaintiffs objected for the same but defendant No.1 started to quarrel with plaintiffs and challenged plaintiffs stating that suit lands are in his name and he can do anything as per his whims and fancies and plaintiffs have no right to ask or question him. The plaintiffs shocked after observing conduct and attitude of defendant No.1 and thereafter plaintiffs conveyed a panchayat through elders of the locality and demanded defendant No.1 to effect partition and to allot them share in the suit properties. But defendant No.1 refused to effect partition and to give share to the plaintiffs.

4. Thereafter, plaintiffs collected relevant documents of suit properties and learnt that defendant No.1 availed loan of Rs.5,50,000/- from defendant No.2 bank behind the back of plaintiffs. The said defendant No.2 bank without proper enquiry and without following due process sanctioned said loan in favour of defendant No.1 as such said loan is not binding on the share of plaintiffs. Thereafter, plaintiffs once again on 15-03-2023 approached defendant No.1 and demanded to effect partition in the suit properties and to clear the loan amount over suit lands but defendant No.1 refused to do so. Therefore,

plaintiffs without any alternative are constrained to file this present suit. This is all stated to be the cause of action for the plaintiffs to file this present suit.

5. In pursuance of the suit summons, defendant No.1 and 2 appeared through their respective counsels. However, in spite of affording suffering opportunities defendant No.1 failed to file written statement as such written statement of defendant No.1 was taken as not filed, whereas defendant No.2 resisted the claim of plaintiffs by filing a written statement and denied the entire pliant averments in toto and called upon plaintiffs to prove the same with strict proof. The defendant No.2 specifically contended that plaintiffs and defendant No.1 are not joint owners and possessors of suit properties and also denied the other aspects. However, defendant No.2 specifically contended that it had sanctioned loan to defendant No.1 only after production of documents and even said loan was already cleared by defendant No.1 therefore defendant No.2 bank is not necessary party to the present suit. Further there is no cause of action for the plaintiffs to file this suit. Defendant No.2 specifically submitted that property was mortgaged by defendant No.1 acting as a elder and Karta of the family and looking into the title of defendant No.1 the defendant No.2 bank sanctioned loan of Rs.5,50,000/- and even defendant No.1 has cleared the outstanding dues in the form of crop loan way back in the year 2021 as such suit as against defendant No.2 bank doesn't survive. Therefore, defendant No.2 prayed to dismiss the suit as against defendant No.2.

6. On considering rival contentions of the parties as many as four issues were framed they are as follows: ;

:ISSUES:

1. Whether the plaintiffs prove that they and defendant No.1 constitute joint family and suit properties are their joint family property?
2. Whether defendant No.2 prove that suit of the plaintiff is not maintainable as against it as contended in its written statement?
3. Whether the plaintiffs are entitled for the reliefs as sought for by them in their pleading?
4. What order or decree?

7. In order to substantiate their case, plaintiffs got examined plaintiff No.1 as PW-1 and also produced as many as 44 documents at Ex.P.1 to 44. The defendant No.1 and 2 failed to cross-examination PW-1 as such cross of PW-1 was taken as nil. Meanwhile plaintiffs' counsel filed memo stating that suit as against defendant No.2 may be dismissed and in view of the memo suit as against defendant No.2 was dismissed as per order sheet dated 11-03-2024.

8. Learned counsel for plaintiffs vehemently argued that plaintiffs by adducing oral evidence of PW-1 colluding with documentary evidence at Ex.P.1 to Ex.P.44 and evidence of P.W.-1 has remained unchallenged and un-rebutted. Further there was no partition in between plaintiffs and defendant no.1 in respect of suit properties. The plaintiffs have legitimate share in the suit properties. Therefore, plaintiffs have to be allotted $\frac{1}{2}$ share in the suit properties. On the other hand inspite of

affording sufficient opportunities defendant No.1 failed to advance arguments as such arguments of Defendant no.1 was taken as nil and matter posted for Judgment.

9. On considering oral and documentary evidence placed on record and in the light of arguments advanced by the plaintiffs counsel, my answers to the above issues are as under:

Issue No.1 : In the Affirmative.
Issue No.2 : In the Affirmative.
Issue No.3 : In the Affirmative.
Issue No.4 : As per the final order for the following;

REASONS

10. **ISSUE No.1 and 2:-** Since both these issues are inter-related and inter connected to each other and finding on one issue will have bearing on the other therefore both these issues are taken up together for common discussion and consideration in order to avoid repetition of facts and evidence.

11. I have already narrated in brief as to what the case of plaintiffs and defendant No.1 is. Admittedly, defendant No.1 though appeared neither filed any written statement nor contested the matter. However, defendant No.2 bank though resisted the claim of plaintiffs but plaintiffs' by filing memo got dismissed suit as against defendant No.2 bank therefore now the only question which requires consideration of this court as to whether plaintiffs and defendant No.1 constitute a joint family and suit properties are their ancestral joint family

properties.

12. In order to substantiate their case, plaintiffs got examined plaintiff No.1 as P.W.-1. The plaintiff No.1 filed her examination in chief by way of affidavit and got marked as many as 44 documents at Ex.P.1 to Ex.P.44. It is needless to say that PW-1 reiterated the entire plaint averments in her examination in chief and specifically deposed that suit properties were originally belongs to their ancestor Mareppa and said Mareppa had two sons namely Girimalappa i.e., defendant No.1 and Subhash i.e., her husband. Further her husband Subhash died on 06-03-2007 leaving behind her and plaintiff No.2 to 4 as his only legal representatives. The defendant No.1 being elder member of the family after death of Mareppa nominally got mutated his name to the record of rights of suit properties. However, plaintiffs and defendant No.1 are joint owners and are joint possession and jointly cultivating the suit properties. However, defendant No.1 in the year 2022 sold soil from suit properties and they objected for the same but defendant No.1 did not care the advice of plaintiffs. Thereafter, plaintiff enquired and obtained records of suit properties and came to know that defendant No.1 availed loan of Rs.5,55,000/- from defendant No.2 bank. Thereafter also plaintiffs approached defendant No.1 to effect partition in the suit properties and to clear the bank loan but defendant No.1 refused to effect partition as such plaintiffs was constrained to file this suit.

13. The defendants did not cross-examine PW-1 as such evidence of PW-1 has remained unchallenged and un-rebutted. However it is said that whenever defendants are placed ex-parte

or did not contest the suit that doesn't mean plaintiffs are entitled for a decree. In order to get a decree party seeking relief has to adduce cogent, credible and legal evidence before court. The plaintiffs in support of their claim produced Ex.P.-1 to 26 record of rights of land bearing Sy.No.90 measuring 6 acres 14 guntas. On perusal of Ex.P.1 record of rights of the year 1973-74 it discloses that said property was standing in the name of Mareppa S/o Gopallappa Harijan. Ex.P.2 is the record of rights of the suit property bearing Sy.No.90 measuring 6 acres 14 guntas which discloses that name of Mareppa was strike off/rounded off and name of defendant No.1 namely Girimallappa was effected as per M.R.No.30-1980/81 dated 25-05-1981 thereafter name of defendant No.1 was continued to the said property till today. The plaintiffs have also produced Ex.P.27 to 43 Records of rights of suit property bearing Sy.No.89/1 measuring 4 acres. Ex.P.27 to Ex.P.33 Record of rights are standing in the name of Mareppa S/o Gopallappa to the extent of 4 acres. However, it appears that name of defendant No.1 was mutated to the suit property bearing Sy.No.89/1 to the extent of 4 acres on basis Ex.P.44 mutation No.H-7/2013-14 on basis of Pouti (ಪೌತಿ) i.e., inheritance. Ex.P.34 to Ex.P.43 are the record of rights of the land bearing Sy.No.89/1 which are standing in the name of defendant No.1 Girimallappa to the extent of 4 acres. So on perusal of oral as well as documentary evidence placed on record it is clear that initially suit properties were belongs to the Mareppa S/o Gopallappa Harijan i.e., propositus of plaintiffs and defendant No.1 but after death of said Mareppa the name of defendant No.1 was mutated to the record of rights of the suit property on Pouti (ಪೌತಿ) basis i.e., inheritance and which continued till today. It is necessary to

mention here that plaintiffs claiming to be wife and children's of Subhash i.e., second son of Mareppa.

14. Admittedly, parties are Hindu and Governed by Hindu Law. The documentary evidence discloses that suit properties originally belongs to Mareppa therefore after death of Mareppa it is his sons namely Girimallappa i.e., defendant No.1 and Subhash have succeeded to the suit properties. But defendant No.1 seems to have got mutated his sole name to the suit schedule properties and did not mutated name of Subhash or his Legal representatives plaintiffs to the record of rights of the suit properties. The plaintiffs being legal representatives of Subhash have legal right and also legitimate share in the suit schedule properties. In order to disbelieve oral evidence of PW-1 and documentary evidence at Ex.P.1 to Ex.P.44 defendant no.1 did not brought any contrary evidence to disbelieve the same. Moreover, evidence of PW-1 has remained unchallenged and un-rebutted.

15. The defendant no.2 contended that suit is not maintainable against it. However, plaintiffs by filing memo dated 05-03-2024 got dismissed the suit as against the defendant no.2 as such much discussion is not required on the said aspect since defendant no.2 is a bank and stranger to the family of plaintiffs and defendant no.1. Therefore, I am of the view that, plaintiffs have proved that they and defendant No.1 constitute a joint family and suit properties are their joint family properties and in view of memo dated 5-03-2024 the suit as against defendant no.2 is not maintainable. **Therefore, I have answered Issue No.1 & 2 in the Affirmative.**

16. **ISSUE NO.3-** It is already held that suit properties were belongs to Mareppa S/o Gopallappa and after his death his sons' namely Girmallappa i.e., defendant No.1 and Subhash have succeeded to the suit properties. After the death of Subhsh his wife i.e., plaintiff No.1 and children's i.e., plaintiff No.2 to 4 have succeeded to his share. Since suit properties were originally standing in the name of Mareppa as such it is Section 8 of Hindu Succession Act which will come into play in the present scenario. Therefore, Subhash if he could have been alive could have get half share and defendant No.1 could have got remaining $\frac{1}{2}$ share in the suit properties. As such defendant No.1 is entitled for half share, whereas plaintiffs being wife and children's of Subhash are jointly entitled for remaining half share of Subhash in the suit schedule properties. **Hence, I answered Issue No.3 in the Affirmative.**

17. **ISSUES NO.4:** Hence, for the reasons stated and discussed as above, I proceed to pass the following:-

ORDER

The suit of the plaintiffs is hereby decreed.

The suit as against defendant No.2 is dismissed in view of memo.

The plaintiffs are jointly entitled for half share and defendant No.1 is entitled for remaining half share in the suit schedule properties.

The suit schedule properties being the agricultural lands, situated at Jewargi (K) village shall be partitioned by metes and bounds as per the provisions of Section 54 of C.P.C.

Looking to the relationship in between the parties and facts and circumstance of the case, parties to bear their own cost.

Draw preliminary decree accordingly.

As per the decision of Hon'ble Supreme Court reported in **2022 SCC online SC 737 in between Kattukandi Edathil Krishnan & Anr. Vs. Kattukandi Edathil Valsan & Ors**, the trial court after passing preliminary decree should proceed with case for drawing up the final decree suo-moto and to list the matter for taking steps U/o 20 rule 18 of CPC.

Hence post the matter for taking steps U/o 20 rule 18 of CPC by 05-06-2024.

(Dictated to the Stenographer directly on Laptop, typed by him, corrected, signed and then pronounced by me in the Open Court on this the 22nd Day of March-2024)

(SANDEEP .A. NAIK)
Senior Civil Judge & JMFC
Jewargi.

A N N E X U R E**List of witnesses examined for plaintiff/s:**

PW-1 : Smt. Neelamma W/o Late Subhash.

List of documents exhibited for plaintiff/s:

Ex.P-1 to 43 : RTC extracts.

Ex.P.44 : Mutation extract.

List of witnesses examined for defendant/s:

-Nil-

List of documents exhibited for the defendant/s:

-Nil-

(SANDEEP .A. NAIK)
Senior Civil Judge & JMFC
Jewargi.