

**IN THE COURT OF THE SENIOR CIVIL JUDGE AND JMFC AT  
SEDAM**

**PRESENT: SRI. VIJAYKUMAR.S. JATLA**

**B.Sc., LL.B.  
Senior Civil Judge & JMFC., Sedam**

**DATED THIS THE 9<sup>th</sup> DAY OF MARCH-2023.**

**ORIGINAL SUIT NO.33/2019.**

**PLAINTIFF:**

Mahadevappa S/o Sabanna Kanagadda, Age: 30 years, Occ: Pvt. Service, R/o Sedam, Tq:Sedam, Dist: Kalaburagi.

**(Adv. for plaintiff by Sri.Rajendra Munnur)**

**( V E R S U S )**

**DEFENDANTS:**

1. Jaganath S/o Sabanna Kanagadda, Age: 40 years, Occ: Coolie, R/o Hamal Quarters, Chincholi, road, Sedam, Tq: Sedam.
2. Hanamanth S/o Sabanna Kanagadda, Age: 57 years, Occ: Coolie, R/o Holitippi, Sedam, Tq: Sedam, Dist: Kalaburagi.
3. Vasanth S/o Sabanna Kanagadda, Age: 31 years, Occ: Pvt. Service, R/o Hamal Quarters Chincholi Road, Sedam, Tq: Sedam.

**(Advocate for deft.2 by Sri.B.R.M.)  
(Deft.1 placed Exparte)  
(Defendant No.3 in person)**

**ORDERS ON ISSUE NO.5 WHETHER THE DEFENDANT No.2  
PROVES THAT THE SUIT IS BAD FOR NON-JOINDER OF  
NECESSARY PARTIES I.E., TWO SISTERS OF PLAINTIFF AND  
DEFENDANTS.**

This is a suit filed by the plaintiff against the defendants for partition and separate possession in respect of the suit schedule properties.

**2.** The brief facts of the plaint are that the plaintiff described the suit properties i.e.,(i) Open Plot No.1 in land Sy.No.911/1A measuring 30 x 40 feet situated at Sedam which is bounded by East: Plot No.3, West: Sy.No.910, North: Sy.No.910, South: 30 Feet wide road, ii) House bearing No.1/3/100(old) New 1/4/25(1/4/10) measuring 52 x 25 feet situated at Sedam which is bounded by East: Open place of Diddi, West: House of Shivalingayya Swamy, North: Public Way, South: Open place. (iii) Land Sy.No.3/2 (Hallad Hola) measuring 19 guntas out of total land measuring 1 acre 36 guntas situated at Bibballi village, Tq: Sedam which is bounded by East: Land Sy.No.3/3, West: Remaining land of Ngappa, North: Hanadi South: Remaining land of Nagappa. It is the case of the plaintiff that the suit properties are ancestral and joint family properties of plaintiff and defendants and plaintiff and defendants

are real brothers and they are joint family members. The father of plaintiff and father of defendants by name Sabanna S/o Laxmanna was the owner and possessor of the said property item No.i and ii and his name is appeared in the Municipal records. The suit property item No.i was purchased by the father of plaintiff from its previous owner through registered sale deed vide document No.881/1993-94 dated 16.2.1994 and the plaintiff's father name appeared in the Municipal records and also his name is appeared in the Municipal records in respect of suit item No.ii.

**3.** It is further case of the plaintiff that the suit property item No.iii is purchased by father of plaintiff on behalf of entire family and his own income in the name of defendant No.1 and 2 nominally and entire consideration paid by the father of plaintiff and registered sale deed document No.1635/2008-09 nominally in the name of defendant No.1 and 2. Therefore, the said property is also joint family property of plaintiff and defendants. The father of plaintiff was died on 19.12.2012 at Sedam. The plaintiff and defendants are legal heirs and successors of the deceased and suit property. After the death of father of plaintiff and marriage of the plaintiff, there is no cordial relation between plaintiff and defendants. Therefore, the plaintiff do not want to

continue as joint family members. On 1.8.2019 the plaintiff asked defendants to effect the partition in this suit properties but the defendants refused to effect the partition in the suit properties. Therefore, the plaintiff is constrained to file the suit for partition and separate possession against the defendants in respect of suit properties.

**4.** After service of suit summons, the defendant No.1 did not appeared before the court and hence he was placed exparte, defendant No.3 appeared in person and not filed written statement and defendant No.2 appeared through advocate and filed written statement contended that the plaintiff has not properly described the suit properties. It is denied about the suit properties are ancestral and joint family properties of plaintiff and defendants. It is admitted that the plaintiff and defendants are real brothers and they are joint family members. It is also admitted that the father of plaintiff and defendants by name Sabanna S/o Laxmanna was the owner and possessor of suit properties suit item No.i and ii and his name appeared in the Municipal records. The suit property item No.i was purchased by the father of the plaintiff and defendants from its owner through registered sale deed vide document NO.881/1993-94 dated

16.2.1994 and the plaintiff's father name appeared in the Municipal records in respect of suit item No.ii also. It is denied that the suit property item No.iii is purchased by father of plaintiff on behalf of entire family from his own income in the name of defendant No.1 and 2 nominally. Further it is denied that the entire consideration amount paid by father of plaintiff and defendants and registered sale deed document No.1635/2008-09 is nominally in the name of defendant No.1 and 2. Further it is denied that the suit item No.iii is also joint family property of plaintiff and defendants. It is admitted that the father of parties to the suit was died on 19.12.2012 at Sedam. It is denied that the plaintiff and defendants are only legal heirs and successors of the deceased. It is denied that after the death of father of parties to the suit and after the marriage of plaintiff, there is no cordial relation between plaintiff and defendants. It is denied that on 1.8.2019 the plaintiff asked the defendants to effect the partition in the suit properties. Therefore, the plaintiff constrained to file this suit for partition and separate possession against the defendants. It is denied that all the suit properties are ancestral and joint family properties of defendants. It is contended that except suit item No.3 rest of the suit properties are joint family

properties. It is contended that the plaintiff has not properly valued the suit land and he has not paid the proper court fees.

**5.** It is contended in the further plea that except suit item No.3 rest of properties are joint family properties of parties to the suit. It is contended that the defendant No.2 has purchased the suit item No.3 i.e., land Sy.No.3/2 (Hallad Holla) measuring 19 guntas situated at Bibballi, Tq: Sedam, Dist: Kalaburagi for the consideration amount of Rs.22,500/- which was paid by the defendant No.2 since the defendant No.2 was the driver and having lorry i.e., goods vehicle from his hard work income he has purchased the above said land in his name and also in the name of defendant No.1 jointly. Since the defendant No.2 was not residing in local limit he has nominally purchased in joint name of defendant No.1 and 2 hence neither in joint name of defendant No.1 and 2 hence neither the plaintiff nor the defendant No.1, 3 and others sisters are not entitled any kind of share in suit item No.3 since the plaintiff has taken contention that the suit item No.3 is joint family property and it was purchased nominally in the name of defendant No.1 and 2. Suit item No.iii land Sy.No.3/2 (Hallad Holla) measuring 19 guntas situated at Bibbali, Tq: Sedam, Dist: Kalaburagi is the self acquired property of defendant

No.2 who has purchased the same from his personal income. It is contended that the father of parties to the suit was employee of GESCOM who expired on 19.12.2012 during the life time the father of the parties to the suit had an account of Rs.10,00,000/- (Pension Amount) in account No.52151572934 and after his death the defendant No.1 illegally got transferred said amount of pension of Rs.10,00,000/- from the account of father of parties to the suit to his personal account bearing No.62294198796 vide transaction dated 7.12.2013 the defendant No.1 has not distributed the above said amount between all legal heirs of the deceased Sabanna and the plaintiff and defendant No.1 to 3 and two sisters who have not parties to the suit also entitled share in the said amount of Rs.10,00,000/- (Pension amount). Hence, the defendant No.2 has counter claim of 1/6th share in the above said amount i.e., Rs.10,00,000/-. After going through the contents of plaint only the cause of action arose to defendant No.2 in the month of April 2022 to seek the counter claim of declaration relief in respect of suit item No.3 and also 1/6th share in suit item No.i and ii and above said amount of Rs.10,00,000/-. The defendant No.2 contended that it be declared that the suit item No.iii is the self acquired property of the defendant No.2 is

valued at Rs.1000/- and court fee of Rs.25/- is paid as per Section 26 of Karnataka Court Fees and Suit Valuation Act. For the relief of partition and separate possession of 1/6th share in respect of suit item No.i and ii and also non suit item i.e., amount of Rs.10,00,000/-. Hence court fee of Rs.200/- is paid as per Section 35(2) of KCF and SV Act which is sufficient. Hence, the defendant No.2 has paid the court fee of Rs.225/- is paid which is sufficient. It is further contended that since the parties to the suit have two sisters they also legal heirs and successors of the deceased Sabanna since the suit of the plaintiff is not maintainable as the plaintiff has not made both two sisters as parties to the suit and also he has not included the said pension amount of Rs.10,00,000/-. Hence, the suit of the plaintiff is liable to be dismissed and decree the counter claim made by the defendant No.2.

**7.** On the basis of the above pleadings and on hearing both sides, the issues are framed and the the following issue No.5 is treated as preliminary issue .

**Issue No.5. Whether the defendant No.2 proves that the suit is bad for non-joinder of necessary parties i.e., two sisters of plaintiff and defendants?**

**8.** My findings on the above issue No.5 is as under:

Issue No.5 : In the Affirmative and as per  
final order for the following:.

### **REASONS**

**9. Issue No.5 is treated as Preliminary Issue:-** The case of the plaintiff and defendants is as discussed above. This is a suit for partition and separate possession against the defendants in respect of suit properties. After filing the written statement, this court framed the issues on 27.9.2022 and issue No.5 i.e., Whether the defendant No.2 proves that the suit is bad for non joinder of necessary parties i.e., two sisters of plaintiff and defendants is treated as preliminary issue. The defendant No.2 contended that the two sisters by name Sangeetha W/o Ranoji R/o H.No.684/307, Ring Road, Near Hanuman Temple, Bhavani Nagar, Gulbarga and Mahadevi W/o Vitthal R/o Ramtirth, Sulepeth, Tq: Chincholi, Dist: Gulbarga and are not made as parties as they are the sisters of plaintiff and defendants respectively. The defendant No.2 filed the copies of Aadhar Cards of two sisters along with IA No.5, same was allowed and copy of Aadhar Cards are taken on record vide order dated 7.1.2023.

Inspite of filing the written statement and taking contention of non joinder of necessary parties of two sisters of plaintiff and defendants, the plaintiff not made above stated two sisters as parties to the suit. The presence of two sisters is very much essential for proper adjudication of the matter. Hence, they are necessary parties to the suit. Without the presence of above stated two sisters of plaintiff and defendants the suit cannot be adjudicated properly. Under these circumstances, the defendant No.2 proved that the suit is bad for non joinder of necessary parties. Hence, it is just and necessary to implead the above stated two sisters parties to the proceedings. In the light of the above reasons, **I answer issue No.5 in the Affirmative.**

**10.** As I have answered issue No.5 in the Affirmative, for the foregoing reasons, I proceed to pass the following:

**ORDER**

The plaintiff is directed to implead the two sisters of plaintiff and defendants as parties to the suit i.e., Sangeetha W/o Ranoji R/o H.No.684/307, Ring Road, Near Hanuman Temple, Bhavani Nagar, Gulbarga and

Mahadevi W/o Vitthal R/o Ramtirth, Sulepeth,

Tq: Chincholi, Dist: Gulbarga.

(Dictated to the Stenographer directly on computer and corrected, signed and then pronounced by me, in the open Court on this the **9<sup>th</sup> day of March-2023**, at Sedam)

**(Vijaykumar. S.Jatla)**  
Senior Civil Judge & JMFC.,  
Sedam.

9.3.2023.

(Order pronounced in the open court vide separate order)

**ORDER**

The plaintiff is directed to implead the two sisters of plaintiff and defendants as parties to the suit i.e., Sangeetha W/o Ranoji R/o H.No.684/307, Ring Road, Near Hanuman Temple, Bhavani Nagar, Gulbarga and Mahadevi W/o Vitthal R/o Ramtirth, Sulepeth, Tq: Chincholi, Dist: Gulbarga.

Call on 15.3.2023.

Senior Civil Judge & JMFC,  
Sedam