

**IN THE COURT OF THE SENIOR CIVIL JUDGE
AT SOMWARPET**

Present:-

**Sri.Gokula K. B.A LL.B.,
Senior Civil Judge, Somwarpet**

Dated this 9th day of March 2022

O.S.No.61/2020

PLAINTIFF:-

Sri B.R.Chandrashekhar
S/o late Sri B.K.Rajagopal,
Aged 63 years,
R/a 1456, 6th Cross,
Krishnamurthypuram,
Mysuru district.

(By Sri.N.V.Kumararadhya, Advocate)

// Versus //

DEFENDANTS:-

1. Sri B.R.Krishnaprasad
S/o late Sri B.K.Rajagopal,
Aged 58 years,
R/a No.301, 1st Main Road,
Rajarajeshwari Nagara,
Bengaluru-560 098.
2. Smt.B.R.Jyothi Prabha
D/o Late Sri B.K.Rajagopal,
W/o late R.Ravikumar,
Aged 60 years,

R/a No.93, 6th Cross,
M.M.G. Temple Bell layout,
Srirampura 2nd stage,
Mysuru.

(Defendant No. 1 by Sri N.Karunakara, Defendant No. 2 by Sri
H.S.Ashwathanarayana, Advocates)

Institution of the suit : 04-12-2020
Nature of the suit : Partition and separate possession
Recording of evidence : 23-11-2021
Closing of evidence : 23-11-2021
Pronouncing of Judgment : 09-03-2022
Total Duration of the Suit : Year/s Month/s Day/s
01 03 05

Sd/-xxxx
(Sri. Gokula K.)
Sr. Civil Judge & JMFC,
Somwarpet.

J U D G M E N T

The plaintiff has filed this suit for the relief of partition and separate possession and to declare the gift deed dated 5-10-2006 is not binding on the plaintiff.

2. The brief case of the plaintiffs is as under:-

The plaintiff and the defendants No.1 and 2 are the children of B.K.Rajagopal and late Aparna Gadwal. The plaintiff and defendants No. 1 and 2 belong to Hindu Undivided joint family

governed by Hindu Mitakshara School. It is stated that the plaintiff and the defendants No.1 and 2 and their father were in unauthorized occupation and cultivation of property bearing sy.no. 46/4 measuring 3 acres situated at Gondibasavanahalli, Kushalnagar hobli, Somwarpet taluk referred as Suit A schedule property. The father of the plaintiff has filed application for regularization of occupancy rights in the year 1965. The Deputy Commissioner in his Order dated 9-5-1967 in SR-2-LND8330/61-62 has granted the suit A suit schedule property in the name of father of the plaintiff and the defendants. Accordingly, the Tahsildar of Somwarpet has issued the saguvali chit and grant certificate in the name of father of the plaintiff and the defendants on 18-7-1973. It is stated that the occupancy right is conferred upon the father of the plaintiff as a kartha of the family. The plaintiff and the defendants were in joint possession and cultivation of the said land. The plaintiff and defendants also contributed for development of said suit A schedule property. It is pleaded that the father of the plaintiff has purchased the property bearing sy.no. 46/2P1 measuring 3.00 acres at Gondibasavanahalli village, Kushalnagar hobli, Somwarpet taluk referred as Suit B Schedule property from H. Mahmmmed Sab under the registered sale deed dated 8-7-1988. The father of the plaintiff and his brothers had more than 220 acres of ancestral agricultural properties. They

have sold the same during their lifetime and out of the sale proceeds the father of the plaintiff has purchased the suit B schedule property. It is stated that the father of B.K.Rajagopal has acquired 50 acres of property at Guddenahalli village through a WILL executed by his father B.S.Krishnappa. Said Krishnappa has acquired said property under the unregistered partition deed dated 16-7-1938. B.K.Rajagopal has also entered into agreement for sale of the property measuring 50x100 yard situated in Koppa village and he received advance Rs.45 lakhs. The plaintiff and defendants have sold the house in Srirampura 2nd stage, Mysuru for a consideration of Rs.35 lakhs in the month of June 2019 and have distributed the sale proceeds equally among the plaintiff and the defendant no. 1 and 2. Thus the plaintiff has pleaded that suit B schedule property is acquired by father of the plaintiff out of joint family funds. Therefore the said property is also the joint family property. It is stated that the father of the plaintiff had no absolute right to alienate suit A and B schedule properties. The father of the plaintiff has executed the gift deed in favour of the defendant No.1 on 5-10-2006 bearing document no. 865/2006-07 in respect of suit A and B schedule property. Said sale deed is not binding on the plaintiff. It is pleaded that the plaintiff has sought for partition of the suit schedule property on 15-2-2019 but the defendant No.1 has refused to give the share in the suit schedule property claiming

that he is having absolute right through the gift deed executed by his father. Therefore, the plaintiff has issued legal notice to the defendants on 6-11-2020. In spite of service of notice the defendants have not given the share of the plaintiff in the suit schedule property. Therefore, the plaintiff has filed this suit.

3. After registration of the suit, suit summons issued to the defendants. The defendant No.1 in spite of granting sufficient opportunity has not filed the written statement. The defendant No.2 has filed the written statement with counter-claim by admitting the plaint allegations and also claimed her 1/3rd share in the suit schedule property.

4. On the basis of the pleadings this court has framed following-

ISSUES

1. Whether the plaintiff and defendant No.2 prove that suit A schedule property is granted in the name of their father for and on behalf of the family?

2. Whether the plaintiff and defendant No.2 further prove that their father has purchased the suit B schedule property out of joint family funds acquired by sale of other joint family property?

3. Whether the plaintiff and defendant No.2 prove that the gift deed dated 5-10-2006 executed by their father in favour of defendant No.1 is not binding on the plaintiff and defendant No.2?

4. Whether the plaintiff and defendant No.2 are entitled for the relief claimed in the suit?

5. What order or decree?

5. To prove the case plaintiff himself examined as PW1 and got marked 17 documents as Ex.P1 to P17 documents. The defendant No.2 herself examined as DW-1.

6. Heard arguments of learned counsel for plaintiff and defendants. Perused the records and case is posted for judgment. At this stage the defendant No.1 has filed written statement and prayed to reopen the case. But the said application is rejected vide order dated 7-3-2022 as the once is case is posted for judgment cannot be reopened.

7. The findings of this court on the above points are as under:-

Issue No.1 : In the affirmative,
Issue No.2 : In the affirmative,
Issue No.3 : In the affirmative,
Issue No.4 : In the partly affirmative,
Issue No.5 :As per the final order,

for the following:-

REASONS

8. **Issue No.1:-** The plaintiff has claimed that the plaintiff and defendants No.1 and 2 are the children of B.K.Rajagopal. The

plaintiff has produced the death certificate of Rajagopal as Ex-P1 it shows that he died on 15-7-2017. Aparna Gadwal is the mother of the plaintiff. Her death certificate is produced as Ex-P2. She has also died on 15-7-2017. The plaintiff has produced the survival certificate issued by the Tahsildar as Ex-P3. It shows that the plaintiff and defendants are the children of B.K.Rajagopal. This fact has not been disputed by the defendant No.2. Therefore, the oral and documentary evidence placed on record clearly proves the relationship between the plaintiff and the defendants, Therefore it can be concluded that the plaintiff and defendants No.1 and 2 are the children of B.K.Rajagopal.

9. That The plaintiff has claimed that suit A schedule property is granted in the name of their father B.K.Rajagopal. In this regard the plaintiff has produced the saguvali chit issued by the Tahsildar as Ex-P7. It shows that the suit A schedule property bearing sy.no. 46/4 measuring 3.00 acres is granted in favour of B,K. Rajagopal in LND:SR-2-8330/61-62 dated 5-7-1967. The plaintiff has also produced the mutation register as Ex-P8. As per Ex-8 the suit property is mutated in the name of their father. Therefore, it is clear that the suit A schedule property is granted in the name of father of the plaintiff.

10. Now it is relevant to consider whether the said property is grant is in individual capacity or on behalf of the family. In this

regard the plaintiff has relied on the decision of Hon'ble High Court of Karnataka reported in ***ILR 1999 KAR 831 between Balagouda Alagouda Patile and others V/s Babasaheb Ramagouda patil***. In this decision Hon'ble High Court at para 9 has held that-

So for as the tenancy land is concerned, this court has always held that the tenancy rights if acquired by a member of the family shall be held to be for the benefit of the entire family. The entries in revenue records are not the evidence of title.

The plaintiff further relied on the decision of Hon'ble High Court of Karnataka in *RFA No. 1420/2012 between Narayanappa and others V/so Doddapattabhi and others*. In this decision Hon'ble High Court by referring the judgment of Hon'ble Apex Court has held that-

After referring to the facts of that case, the provisions under the Act and the scheme of the whole Act and also taking note of the earlier two judgments of the Apex Court in the provisions of the Karnataka Land Reforms Act, the Apex Court held as under:- "The suit in the present case was filed after the grant of occupancy rights. The question here is whether the grant of such rights is for the benefit of one of the members of the joint family or for all the heirs left behind by Ramchandra Reddy. Our answer to that question is in favour of the appellants. In our opinion, the grant of such occupancy rights in favour of respondent 1 was for the benefit of all

the legal heirs left behind by Ramachandra Reddy."

11. The plaintiff has also relied on the decision of Hon'ble High Court of Karnataka in *Tamil Selvi V/s Giddareddy*. In this decision also Hon'ble High Court has held that-

the occupancy right conferred upon any member of the joint family is for the benefit of entire family.

The plaintiff has also relied on the section 2(6) of Karnataka Land Grant Rules it defines the -

Family in relation to a person means such person, and if married, the wife or husband as the case may be, and the dependent children and grand children of such person. Therefore, the family includes the children also.

He has also relied on the *section 101 of Karnataka Land Revenue Act* which provides that-

an occupancy shall be deemed to be a heritable and transferable property.

Therefore, in view of the above provisions of law and the principles laid down by the Hon'ble High court of Karnataka the law is well settled that the occupancy rights granted in favour of one person of the family is not in his individual capacity and it is granted for on behalf of the family and for the benefit of entire family. Therefore, this court concludes that the occupancy rights

granted by the Government in favour of B.K.Rajagopal in respect of suit A schedule property is for the benefit of entire family including the plaintiff and the defendants. Therefore, this court answers the issue No.1 in the affirmative.

12. **Issue No.2:-** The plaintiff has claimed that suit B schedule property bearing Sy.no. 46/2 measuring 3 acres of Gondibasavanahalli village is purchased by the father of the plaintiff B.K.Rajagopal from H.Mohammed Sab under the registered sale deed dated 8-7-1988. The plaintiff has claimed that said property is purchased by his father out of the joint family funds derived by him by sale of the joint family property. The plaintiff has produced the said sale deed dated 8-7-1988 as Ex-P4. As per the Ex-P4 sale deed the father of the plaintiff has paid a sum of Rs.15,000/- as sale consideration to the vendor. The PW-1 has deposed that the father of the plaintiff and his brothers have sold the joint family properties and by utilizing the said consideration received by him, he has purchased the suit B schedule property. To substantiate this fact the plaintiff has produced the copy of sale deed as Ex. P 6 executed by the father of the plaintiff B.K.Rajagopal and his 3 brothers. Under the sale deed they have sold the property measuring 1.30 acres in sy.no.45/1 situated at Koppa village, Harehalli hobli of Piriya pattana taluk in favour of D.B.Jayapal for a total consideration of Rs.18,000/-. In said sale

deed it is stated that the said properties are acquired by their father Krishnappa under the partition deed. Therefore, it is clear that under Ex-P6 the plaintiff's father has received the sale consideration of Rs.18,000/- whereas the suit B schedule property purchased after 5 years of sale and sale for consideration of Rs.15,000/-. Further more the father of the plaintiff is enjoying the suit A schedule property and deriving income in suit A schedule property. Therefore, the contention of the plaintiff that the suit B schedule property is acquired by the father of the plaintiff out of the joint family funds cannot be disbelieved and this contention of the plaintiff is so probable. Therefore, without much discussion this court concludes that the suit B schedule property is acquired by the plaintiffs father out of joint family funds and the suit B schedule property is also the joint family property of plaintiff and defendants. Therefore this court answers the Issue no. 2 in the Affirmative.

13. **Issue No.3:-** The father of the plaintiff B.K.Rajagopal has executed the gift deed in favour of defendant No.1 on 5-10-2006 and copy of the same is produced as Ex-P5. As per Ex-P5 the father of the plaintiff has gifted the both the suit A and B schedule properties in favour of the defendant No.1. This court while answering the issues No.1 and 2 has concluded that suit A and B schedule properties are joint family properties of plaintiff and

defendants. Therefore, the father of the plaintiff is not having absolute right to gift the suit A and B property in favour of defendant No.1. Therefore, without much discussion this court concludes that the gift deed executed by the father of the plaintiff in favour of the defendant No.1 is not binding on the share of the plaintiff as well as the defendant No.2. Hence this court answers the issue No. 3 in the affirmative.

14. **Issues No.4:-** The plaintiff and the defendant No.2 have claimed 1/3rd share in the suit schedule property. While answering above issues this court has held that the the suit A and B schedule property is the joint family property of the plaintiff and the defendants and the gift deed executed by father of the plaintiff infavour of the plaintiff will not bind on the plaintiffs share in the suit schedule property. It is admitted fact that B.K.Rajagopal is having 3 children who are the plaintiff and defendants No.1 and 2. Therefore, if the concept of notional partition is applied to the case on hand, the suit schedule property is to be devided in to 4 equal shares between the plaintiff, the defendant No.1 and 2 and father of the plaintiff. The father of the plaintiff has also executed the gift deed in favour of the defendant No. 1. This gift deed is not binding on the plaintiff and defendant no. 2 in respect of their 1/4th share in the suit schedule property. But it is binding in respect of the 1/4th share of their father. Therefore, the share allotted to the

father of the plaintiff under the notional partition will go to the defendant No.1 as his father has executed the gift deed and it is binding in respect of his share in the suit schedule property. The said gift deed will be valid in respect of his share in the suit schedule property. Therefore, the suit schedule property is to be divided into 4 shares and the plaintiff will acquired 1/4th share and the defendant No.2 will acquired 1/4th share and the defendant No.1 will acquired $\frac{1}{2}$ share in the suit schedule property. Therefore, this court concludes that the plaintiff and defendant No.2 are entitled to 1/4th each share in the suit schedule property. Therefore, this court answers the issue No. 4 in partly in the affirmative.

15. **Issue No.5:-** In view of findings recorded to the above issues, this court proceed to pass the following-

ORDER

The suit filed by the plaintiff and counter claim of the defendant no. 2 is hereby partly allowed.

It is declared that the plaintiff and defendant No.2 are entitled for $\frac{1}{4}$ th each share in the suit schedule property.

It is further declared that the gift deed executed by B.K.Rajagopal in favour of the defendant No.1 as per document No.865/-2006-07 dated 5-10-2006 registered in office of Sub Registrar, Somwarpet is not binding on the plaintiff and the

defendant No.2 in respect of their share in the suit schedule property.

The plaintiff and defendant No.2 are at liberty to seek for actual partition of the suit schedule property by metes and bounds as provided under Section 54 of CPC.

Draw preliminary decree accordingly.

No order as to cost.

(Dictated to the stenographer, transcribed by her, revised and then pronounced by me in the open court this 9th day of March 2022).

Sd/-xxxx
(Sri. Gokula .K)
Sr. Civil Judge & JMFC,
Somwarpet.

ANNEXURE

WITNESS EXAMINED ON BEHALF OF THE PLAINTIFF:

PW-1 : B.R.Chandrashekar

DOCUMENTS MARKED ON BEHALF OF THE PLAINTIFF:

Ex.P1 & 2 : Death certificates
Ex.P3 : Survival certificate
Ex.P4 : C/c of sale deed
Ex.P5 : C/c of gift deed
Ex.P6 : C/c of sale deed
Ex.P7 : C/c of saguvali chit
Ex.P8 : C/c of mutation
Ex.P9 & 10 : RTC
Ex.P11& 12 : Encumbrance certificate
Ex.P13 : C/c of Mutation Extract
Ex.P14 : Copy of jamabandi
Ex-P15 : Legal notice

WITNESS EXAMINED ON BEHALF OF THE DEFENDANTS:

DW-1 : B.R.Jyothiprabha

DOCUMENTS MARKED ON BEHALF OF THE DEFENDANTS:

Nil

Sd/-xxxx
(Sri. Gokula .K)
Sr. Civil Judge & JMFC,
Somwarpet.