

KABK020012822022



**IN THE COURT OF THE I ADDL. SENIOR CIVIL JUDGE
AND J.M.F.C., AT BAGALKOTE**

Dated 03rd July - 2024

Present

**Sri. Chandrashekar P. Diddi B.A., LL.B.,
I Addl.Senior Civil Judge & JMFC.,
Bagalkote.**

O.S No.296-2022

PLAINTIFFS:

1. Smt.Parvatevva W/o Fakirappa Badawadagi,
Age: 65 years, Occ: Household work.
2. Smt.Mahanteshwari D/o Fakirappa Badawadagi
@ Smt.Mahanteshwari W/o Muragesh Banni,
Age: 35 years, Occ: Household work.
3. Mahantesh S/o Fakirappa Badawadagi,
Age: 30 years, Occ: Business.
All are R/o Ward No.3,
Near Shankarling Temple.
Jainapeth, Bagalkote.

(By Sri.M.M.Kandagal, Adv.,)

-Vs-

DEFENDANTS:

1. Kalakappa S/o Mallappa Badawadagi,
Age: 70 years, Occ: Business.
2. Sangappa @ Sangamesh S/o Mallappa
Badawadagi @ Balutagi,
Age: 58 years, Occ: Business.

3. Basavaraj S/o Mallappa Badawadagi,
Age: 56 years, Occ: Business,
All are R/o Plot bearing No.12,
Model "E", Sector No.65,
Navanagar, Bagalkote.

(Deft No.1 & 2 by Sri.A.D.Badiger, Adv.,)
(Deft No.3 by Sri.D.R.Choudhari, Adv.,)

Date of institution of the suit	21.10.2022			
Nature of the suit (suit on pro-note, for declaration & possession suit for injunction etc.,)	For partition & Separate possession			
Date of commencement of recording of evidence	12.12.2023			
Date on which the judgment was pronounced	03.07.2024			
Total duration	Year's	Month's	Day's	
	01	08	12	

(Sri.Chandrashekar P.Diddi)
I Addl Sr. Civil Judge & JMFC.,
Bagalkote.

JUDGMENT

1. The plaintiffs have filed suit for partition and separate possession against the defendants. The properties mentioned in 'B' schedule namely 1) plot

No.12, 2)plot No.15, 3)plot No.73 all are situated at Navanagar, Bagalkote,4) Sy.No.162/2 measuring 2 acres of land situated at Neeralakeri village and 5) Sy.No.72/2/1 measuring 4 acres 28 guntas situated at Sulikeri village, 6) 83 tola gold and 30 Kg silver ornaments are hereafter in called as item No.1 to 6 properties of schedule 'B'.

2. The brief facts of the plaintiff case are as follows:

As per the genealogical tree submitted along with plaint, it reveals that original propositus by name Sri.Mallappa died leaving behind defendant No.1 to 3 and deceased Sri.Fakirappa as his legal-heirs. Plaintiffs are the legal-heirs of deceased Fakirappa. The item No.1 to 3 properties are ancestral properties of plaintiffs and defendants. Item No.4 and 5 properties are purchased out of the joint family income. But the said properties are stands in the name of defendant No.2. The item No.6 property is in custody of defendant No.2. Item No.6 property is pledged in the Basaveshwar Co-Operative

Bank, Bagalkote for obtaining loan. Defendants No.1 and 2 are held liable to pay the interest on the said loan. CTS No.125, 125A and 572 are submerged under UKP and the compensation amount awarded by the SLAO, Bagalkote which was received by the plaintiffs and defendants. Further Rehabilitation Officer of BTDA, Bagalkote allotted the item No.1 to 3 to the plaintiffs and defendants. There was difference of opinion arose between the plaintiffs and defendants in respect of shares in the suit properties. The plaintiffs asked the defendants to give share but the defendants refused to give share. Hence, the plaintiffs have constrained to file suit for the above said relief.

3. After issuance of summons, summons duly served to the defendants. Defendants No.1 and 2 appeared through their counsel, but not filed written statement. Defendant No.3 filed written statement.

4. The defendant No.3 admits the plaintiff claim in the suit property. By way of counter claim the defendant sought for 1/4th share in the suit property.

5. Based on the above pleadings, the following issues were framed:

ISSUES

- 1. Whether the plaintiffs prove that they are entitled for 1/4th share in suit schedule properties.*
- 2. Whether the defendant No.3 proves that he is also entitled for 1/4th share in suit schedule properties?*
- 3. Whether the counter claim of the defendant No.3 is liable to be allowed?*
- 4. What order or decree?*

6. In order to prove the case, the plaintiff No.2 examined as PW1, 2 documents marked as Ex.P.1 and 2. The defendant No.3 examined as DW1 and not produced the document.

7. Heard the argument of the plaintiff's counsel and defendants' counsel. Perused the entire materials on record.

8. My answers to the above issues are as under:

Issue No.1 : Partly in the Affirmative

Issue No.2 : Partly in the Affirmative

Issue No.3 : Partly in the Affirmative

Issue No.4 : As per final order, for the following;

REASONS

9. **Issues No.1 to 3:-** For the sake of brevity and to avoid the repetition of facts, all these issues are taken up together for discussion. It is specific case of the plaintiff that CTS No.125, 125A and 572 are submerged under UKP. Thereafter, SLAO, BTDA Bagalkote granted item No.1 to 3 properties. Out of the income of the item No.1 to 3 properties item No.4 and 5 properties have been purchased.

10. In order to prove the case, plaintiff examined as PW.1. In examination-chief plaintiff has reiterated the entire plaint averments. She has produced the RTC extracts of suit property as per Ex.P.1 and 2. On perusal of the order-sheet on 28.03.2024 this court has directed to the defendant No.1 and 2 to produce the original Hakku Patra in respect of suit properties. In spite of directions, the defendants No.1 and 2 have not produced any documents. That itself shows the defendant No.1 and 2 are hiding the documents. On perusal of the PW.1

and DW.1 evidence both have categorically deposed the BTDA Bagalkote has allotted item No.1 to 3 properties in view of their submersion of their ancestral properties. On perusal of the RTC extract of item No.4 and 5 suit proprieties, both are stands in the name of defendant No.2. The PW.1 and DW.1 evidences are unchallenged one. When the other defendants not entered in the witness box and not rebutted the plaintiff evidence, as per Sec.114(g) of Indian Evidence Act an adverse inference must be drawn against the defendants.As per the above discussions the plaintiffs successfully proved that item No.1 to 5 properties are ancestral and joint family properties.

11. In respect of item No.6 the plaintiffs have specifically submitted that 80 tola gold and 30 Kg silver pledged in Basaveshwara Co-Operative, Bank, Bagalkote and defendants No.1 and 2 have obtained loan. It is best known to the plaintiffs they have not produced any documents to show that the defendant No.1 and 2 pledged the 80 tola gold and 30 Kg silver in the

Basaveshwara Co-Operative, Bank, Bagalkote, Further the plaintiffs have not taken any step to collect the documents from the Basaveshwara Co-Operative, Bank, Bagalkote, to prove that the defendants Nos.1 and 2 have pledged 80 tola gold and 30 Kg silver ornaments. Therefore, plaintiffs and defendant No.3 have failed to prove that 80 tola gold and 30 Kg silver are in possession of defendant No.1 and 2.

12. As per the above discussions plaintiffs have successfully proved that item No.1 to 5 are the ancestral and joint family properties. The deceased Fakirappa, Sri.Kalakappa, Sri.Sangappa @ Sangamesh, Sri.Basavaraj are the children of deceased Mallappa. Therefore, Plaintiffs being the legal-heirs of deceased Fakirappa together entitled for 1/4th share, defendant No.1 to 3 each entitled for 1/4th share in the item No.1 to 5 properties. Accordingly, I answer issues No.1 to 3 ***“Partly in the Affirmative”***.

13. **Issue No.4:-** As per the aforesaid discussion i proceed to pass following:

ORDER

The suit of the plaintiff is hereby decreed in part.

Plaintiffs together, defendant No.1 to 3 each are entitled 1/4th share in item No.1 to 5 properties.

The claim of plaintiffs and defendant No.3 in respect of item No.6 property is hereby rejected.

Draw preliminary decree accordingly.

No order as to costs.

(Dictated to Stenographer, transcribed by him and then mistakes are corrected and pronounced by me in the Open Court, this the 03rd day of July - 2024)

(Sri.Chandrashekar P.Diddi)
I Addl Sr. Civil Judge & JMFC,
Bagalkote.

ANNEXURE**Witnesses examined for the plaintiff:-**

PW.1 : Smt.Mahanteshwari D/o Fakirappa Badawadagi.

Documents marked for the plaintiff:-

Ex.P.1 : RTC extract of Sy.No.162/2

Ex.P.2 : RTC extract of Sy.No.72/2/1

Witnesses examined for defendant:-

DW.1 : Sri.Basavaraj S/o Malappa Badawadagi.

Document marked for the defendants:-

-Nil-

**I Addl Sr. Civil Judge & JMFC.,
Bagalkote.**