

KABR510065902022



**THE COURT OF THE SENIOR CIVIL JUDGE & JMFC,
HOSAKOTE.**

PRESENT:

Sri. Arun Kumar.G. B.A., LL.B.
Senior Civil Judge & JMFC,
Hosakote.

Dated this the 16th day of April 2024

O.S.No.2460/2022

(Old O.S. No.1645/2016)

- Plaintiff/s** : 1. Smt.Shilpa,
W/o Manjunath B.S.,
Aged about 29 years,
2. Smt.Sarala,
W/o L.Prabhakar,
Aged about 25 years,
R/at Medhalli Village,
Virgonagar Post,
Bengaluru-560049.
3. Sri.Punith Nayak,
S/o Late.Krishnappa,
Aged about 23 years,
4. Smt.Sarswathamma,
W/o Late.Krishnappa,
Aged about 47 years,

Plf.No.1,3 & 4 are R/at
Bellur Village,

Narasapura Hobli, Kolar Taluk,
Bengaluru Rural District.

(By Sri.H.N., Advocate)

- V/s -

- Defendant/s :**
1. Sri.Muniyappa,
S/o Channappa,
Aged about 60 years,
R/at Begur Village,
Sulibele Hobli, Hoskote Taluk,
Bengaluru Rural District.
 2. Smt.Manjula,
W/o Sanjevappa,
Aged about 35 years,
R/at Bellur Village,
Narasapura Hobli, Kolar Taluk,
Bengaluru Rural District.
 3. Sri.Srinivas,
S/o Late.Thimmaiah,
Aged about 33 years,
 4. Sri.Manju,
D/o Late.Thimmaiah,
Aged about 31 years,
Def.No.3 & 4 are R/at Bhattalahalli,
Chinthamani Taluk,
Chikkaballapura District.
 5. Smt.Rathnamma,
W/o Ramachandrappa,
Aged about 54 years,
R/at Bellur Village,
Narasapura Hobli, Kolar Taluk,
Bengaluru Rural District.
 6. Sri.Narasimhaiah,
S/o Late.Channappa,
Aged about 52 years,

R/at Begur Village,
Sulibele Hobli, Hoskote Taluk,
Bengaluru Rural District.

7. Sri.Muninarayanamma,
W/o Venkateshappa,
Aged about 50 years,
R/at Venkatapura Village,
Arabikothanuru Post,
Kolar Taluk and District.

(Def.No.1,2,5,7 by Sri.K.R, Adv.)
(Def.No.6 by Sri.B.R.M.S., Adv.)
(Def.No.3 & 4: Exparte)

Date of institution of suit :	09-11-2016		
Nature of suit :	Partition and Separate Possession		
Date of recording evidence :	22-06-2023		
Date of closing evidence :	06-02-2023		
Date of Judgment Pronounced :	16-04-2024		
Total Duration :	Years	Months	Days
	07	05	07

(Arun Kumar.G)
Senior Civil Judge & JMFC,
Hosakote.

J U D G M E N T

The suit is filed by the plaintiffs against the defendants for partition and separate possession of 1/6th share in respect to suit schedule properties and such other reliefs.

2. Brief facts of the plaintiffs' case is as here under:-

The plaintiffs and defendants are constituted a Hindu undivided joint family and they are in joint possession and enjoyment of the suit schedule properties. The suit schedule properties are acquired by the grand father of the plaintiff No.1 to 3 and father-in-law of plaintiff No.4 and some of the properties are acquired through joint family of plaintiffs' father and other defendants. The father of the plaintiff No.1 to 3 and husband of plaintiff No.4 by name Krishnappa died on 24-11-2006. The defendant No.1 is the kartha of the joint family of plaintiffs and defendants and there is no partition between the plaintiffs and defendants till today.

After the death of father of plaintiff No.1 to 3, the plaintiffs started living at Bellru Village, Narasapura Hobli, Kolar Taluk and further they have approached the defendants to effect partition and separate possession of their shares. But, the

defendants postponed to do the same for one or the other reasons. Further, the plaintiffs came to know that the defendants by colluding with each other trying to alienate the suit schedule properties to other third parties in order to deceive the rights of the plaintiffs over the suit schedule properties. Hence, without any alternative the plaintiffs have filed the suit for partition and separate possession in respect of the suit schedule properties.

3. On service of suit summons, the defendants were appeared before the court through their counsel and filed written statement. The defendant No.3 and 4 even after giving sufficient opportunities, have not appear before the court hence they are placed exparte.

The defendant No.1,2,5 and 7 were contended that the suit schedule properties are not an ancestral properties of plaintiffs and defendants but it is the self acquired properties of the defendant No.1 by investing his hard earned money. The plaintiffs and defendants never lived together. The defendant No.1 has acquired the suit schedule properties by his own income and it is neither the joint family property nor ancestral

property of the plaintiffs. Therefore, they are not entitled for partition of the suit schedule properties. From the date of acquisition of suit schedule properties, the defendant No.1 is in possession and enjoyment of the same and the revenue entries were mutated in his name. Therefore, the plaintiffs are claiming the rights against the defendants is not sustainable in the eye of law since the schedule properties are not ancestral properties of plaintiffs. Hence, prays to reject the suit with costs.

The defendant No.6 has filed written statement with counter claim by admitting the suit claim and also claimed her 1/6th share in the suit properties.

4. In view of the above pleadings of the parties, the following issues arise for consideration:

ISSUES

1. Whether the plaintiffs prove that themselves and the defendants constitute a Hindu undivided joint family and they are in joint possession and enjoyment of suit schedule properties ?
2. Whether the plaintiffs are entitled to 1/6th share in the suit schedule properties ?
3. Whether the plaintiffs and defendant No.1,2,5,6 & 7 are entitled for suit reliefs as sought for ?

4. What order or decree?

5. In order to prove the suit claim, the plaintiff No.2 examined herself as P.W-1 and got marked 68 documents as Ex.P-1 to 68 and closed her side. In order to prove the defense, the defendant No.6 examined himself as D.W-1 and got marked 1 document as Ex.D-1. Thereafter, the case was posted for arguments.

6. Heard arguments and perused the documents.

7. My findings 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 final order
for the following;

REASONS

8. **Issue No.1**:- The plaintiffs have filed the above suit against the defendants for partition and separate possession of 1/6th share with respect to suit schedule properties. In order to prove that there is an existence of joint family between the parties, the plaintiff No.2 examined as P.W-1 by filing examination in chief affidavit and marked documents as Ex.P-1

to 68. Ex.P-1 is the genealogical tree of the plaintiff and defendants family. Ex.P-2 is the death certificate of father of the plaintiff by name Krishnappa who died on 24-11-2006, Ex.P-3 to 7 and Ex.P-17 to 68 are the RTC extracts, Ex.P-8 to 12 are the mutation register extracts, Ex.P-13 and 14 are the demand register extracts, Ex.P-15 and 16 are the tax paid receipts. Though, the defendants No.1, 2, 5, 6, and 7 were appeared through their counsel have not cross examined the P.W-1.

9. In order to prove the defense, the defendant No.6 examined himself as D.W-1 by filing examination in chief affidavit and marked document as Ex.D-1 the genealogical tree. The counsel for the plaintiffs cross examined the D.W-1 wherein he admitted the existence of joint family between the parties and also the acquisition of suit properties. Further, he has also claimed an equal share over the same.

10. On perusal of available records which clearly goes to show that as per Ex.P-3 to 7 the suit schedule properties are in the name of defendant No.1 by name Muniyappa S/o Channappa acquired through grant. Further, as per Ex.P-5 the

suit item No.3 is in the name of grand father of the plaintiff by name Channappa. Further, as per Ex.P-6 the suit schedule item No.1 property is in the name of defendant No.6. As per Ex.P-8 the katha was changed in the name of defendant No.1 through grant made in his favour. Further, they have also paid tax with respect to suit schedule properties. As per Ex.P-13 and 14 the katha of the suit schedule item No.6 and 7 are in the name of defendant No.1.

11. Though the defendants through their written statement claimed an equal share over the suit schedule properties, the defendant No.1 denied the existence of joint family and acquisition of suit property, he did not step into the witness box to prove his defense nor produced any documents. Further, the defendant No.1, 2 and 5 to 7 through their written statement also claimed an equal share in the suit properties.

12. It is the contention of the plaintiffs that, being the kartha of the joint family, the defendant No.1 acquired the same through joint family nucleus and also grant was made in his favour on behalf of the joint family. Further, the grand

father of the plaintiff by name Channappa died intestate leaving behind the plaintiffs and defendants to succeed his estate.

13. On perusal of all the above records and the admissions made by the defendants through their written statement and by the D.W-1 clearly goes to show that there is an existence of joint family between the parties and there is no partition was took place between themselves. Hence, I answer issue No.1 in the “**Affirmative**”.

14. **Issue No.2:-** The plaintiffs in order to prove that they are entitled to 1/6th share in the suit properties, the plaintiff No.2 examined herself as P.W-1 and also produced sale deeds and revenue records as per Ex.P-1 to 68. Further, the D.W-1 also clearly admitted the existence of joint family and also acquisition of suit properties. Further, they have also admitted that the father of the defendant No.1 and 6 by name Channappa died intestate leaving behind the plaintiffs and defendants has his legal heirs.

15. As per the admissions made by both the parties, till this date there is no partition was took place between themselves. Being the legal heirs of Krishnappa S/o Channappa the plaintiffs are also entitled for an equal share in the suit properties. Furthermore, the defendant No.1, 2, 5, 6 and 7 were also claimed an equal share over the same. Though, the suit summons was served on the defendant No.3 and 4, they did not appear before the court and also not filed any written statement on their behalf by denying the suit claim. Hence, there is no impediment to grant the relief claimed by both the parties. Hence, Issue No.2 is answered in **“Affirmative”**.

16. **Issue No.3:-** As the plaintiffs and the defendants were clearly admitted the existence of joint family and acquisition of suit properties and they have also claimed an equal share over the suit properties. As there is no denial by the parties regarding joint possession and on perusal of available documents the suit schedule properties are in joint possession and enjoyment of both the parties, they are entitled to an equal

share in the suit schedule properties. Hence, I answer issue No.3 in “**Affirmative**”.

17. **Issue No.4**:- In the light of the discussion made above, I proceed to pass the following:-

O R D E R

The suit filed by the plaintiffs is hereby decreed.

The plaintiff together entitled to 1/6th share and defendant No.2 to 4 together entitled to 1/6th share in the suit schedule properties by metes and bounds.

Further, the defendant No.1, 5 to 7 are entitled to 1/6th share each in the suit schedule properties by metes and bounds.

The plaintiffs and defendants can work out their share under Section 54 of CPC.

Considering the relationship between the parties, no order as to costs.

Draw preliminary decree accordingly.

(Dictated to the Stenographer, corrected by me and then pronounced in the open court on this the 16th day of April, 2024.)

(Arun Kumar.G)
Senior Civil Judge & JMFC,
Hosakote.

ANNEXURE**List of witnesses examined for the plaintiff/s:**

P.W-1 : Smt.Sarala

List of documents marked for the plaintiff/s:

Ex.P-1 : Genealogical tree

Ex.P-2 : Death certificate

Ex.P-3 to 7 : RTC's

Ex.P-8 to 12 : Mutation register extracts

Ex.P-13 & 14 : Demand register extracts

Ex.P-15 & 16 : Tax paid receipts

Ex.P-17 to 68 : RTC extracts

List of witnesses examined for the defendant/s:

D.W-1 : Sri.Narasimhaiah

List of documents marked for the defendant/s:

Ex.D-1 : Genealogical tree

(Arun Kumar.G)

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Judgment pronounced in the open
court vide separate order:

ORDER

The suit filed by the plaintiffs is hereby decreed.

The plaintiff together entitled to 1/6th share and defendant No.2 to 4 together entitled to 1/6th share in the suit schedule properties by metes and bounds.

Further, the defendant No.1, 5 to 7 are entitled to 1/6th share each in the suit schedule properties by metes and bounds.

The plaintiffs and defendants can work out their share under Section 54 of CPC.

Considering the relationship between the parties, no order as to costs.

Draw preliminary decree accordingly.

Senior Civil Judge & JMFC,
Hosakote.