

KAKP020003112018



IN THE COURT OF THE SENIOR CIVIL JUDGE AND CJM., AT
KOPPAL.

Dated : This the 23rd day of August 2021.

**Present: Smt. BHAVANI .L.J.
B.A., L.L.M.**

Senior Civil Judge & CJM.,
Koppal.

O.S.No.15/2018.

Plaintiff:

Yamanavva W/o Beerappa Gollar, Age: 30
years, Occ: Agrilculrist, R/o Kerehalli, Tq: Dist:
Koppal.

By Sri. S.M.P Advocate

V/s

Defendants:

1. Kariyappa S/o Dyamappa Myadaneri, Age: 60
years, Occ: Agrilculrist, R/o Kariyamma
Gudi Road, Budagumpa, Tq: Dist: Koppal.
Now Residing near Adavi Amareshwara Temple,
Kukanapalli, Tq: Dist: Koppal..

2. Shivanagawwa W/o Kariyappa Myadaneri,
Age: 53 years, Occ: Agrilculrist, R/o
Kerehalli, Tq: Dist: Koppal.
3. Basawwa W/o Kariyappa Myadaneri, Age: 45
years, Occ: Agrilculrist, R/o Kariyamma
Temple Road, Budagumpa, Tq: Dist: Koppal.
Now R/o Near Adavi Amareshwar Temple,
Kikanapalli, Tq: Dist: Koppal.

4. Mariyappa S/o Dyamappa Myadaneri, Age: 43 years, Occ: Agrilculrist, R/o Budagumpa, Tq: Dist: Koppal.

**D-1, 3, 4 are Ex-parte.
D-2 Sri. PBA Adv.,**

Date of Institution of the suit : 09-04-2018.
Nature of the suit : Suit for Partition
& Separate Possession
Date of the commencement of recording of the Evidence : 03-02-2021.
Date of Judgment : 23-08-2021.

Total duration	Years	Months	Days
	03	04	14

(Smt. Bhavani L.J.)
Sr. Civil Judge and

CJM

Koppal.

J U D G M E N T

This is a suit for partition and separate possession of the suit schedule properties.

2. The facts of the case of the plaintiff is as under:

The plaintiff is the daughter of defendant No.1 and defendant No.2. The defendant No.1 is having two wives i.e., defendant No.2 and 3. The defendant No.2 who is the mother of the plaintiff is the first wife of the defendant No.1. The plaintiff is the sole legal heir of the defendant No.1 and 2 and there are no issues to defendant No.1 and 3. Defendant No.4 is the purchaser of the suit schedule Item No.2 property and also relative. It is further averred that the suit schedule properties are the ancestral and joint family properties of the plaintiff and defendant No.1 to 3. Hence, she is entitled to equal share in the said property. It is further averred that after her birth, the defendant No.1 did not take her mother to the matrimonial home. Hence, the mother of the plaintiff is residing in the Kerehalli village but the defendant No.1 used to give some portion of the crops grown in the suit property. The defendant No.1 has neglected the plaintiff

and her mother. When the plaintiff asked her legitimate share in the suit schedule property, the defendant No.1 has refused the same. She learnt that the defendant No.1 has sold the suit schedule Item No.2 property to the defendant No.4 and the said alienation is not for the family necessity and the said alienation made behind their back. Hence, the alienation is not binding on her share. Hence, the plaintiff is entitled to half share in the suit schedule property. Hence, this suit.

3. After service of summons to the defendants, defendant No.1, 3 and 4 did not appear before the Court, hence, placed ex-parte and defendant No.2 appeared through her counsel, but not filed written statement.

4. Now, the points that arises for consideration of this Court are as follows:

(1) *Whether the plaintiff proves that the plaintiff and defendants No.1 to 3 are in joint and constructive possession of the suit schedule properties?*

(2) Whether the plaintiff is entitled for the relief as sought for?

(3) *What order or decree?*

5. In support of the case, the plaintiff, she got examined herself as P.W.1 and got marked 50 documents as per Ex.P-1 to Ex.-50. On the other hand the defendant No. 1,3 and 4 have been placed exparte.

6. Heard the arguments. Perused the materials available on record.

7. On perusal of the oral and documentary evidence on record, I answer the above points as follows:

Point No.1 : In the Partly affirmative
Point No.2 : In the Affirmative
Point No.3 : As per final order,
for the following:

:REASONS:

8. Point No.1 and 2:- These two points are taken up together for common discussion in order to avoid repetition of facts.

9. PW-1 is the plaintiff, she has reiterated the plaint averments in her examination in chief affidavit. Further, the plaintiff has produced the RORs as per Ex.P-1 to 46. Ex.P-1 to 4 are the hand written RORs in respect to Sy. No. 27 of Amarapur village. Ex.P-5 is the ROR in respect to land bearing Sy. No. 27/30 which stands in the name of Ningappa S/o Mariyappa. Ex.P-6 to 8 are the RORs in respect to land bearing Sy. No. 30 which stands in the name of Hanumawwa, Dyamappa and Mariyappa. Ex.P-9 is the hand written ROR in respect to land bearing Sy. No.30/A1 i.e., suit schedule item No. 1 property. It reveals that suit schedule Item No.1 property mutated in the name of Kariyappa as per MR No. 6/29-06-1988. Ex.P-10 is the ROR in respect to suit schedule Item No.1 property wherein the name of

Kariyappa shown as pattedar for the year 1998-99 and 1999-2000. Ex.P-11 is the hand written ROR in respect to suit schedule item No.2 property i.e., Sy. No. 16/A which stands in the name of Dyamappa S/o Mariyappa. Ex.P-12 to 14 are the hand written ROR in respect to suit schedule Item No.2 property which stands in the name of Dyamappa S/o Mariyappa as per sale deed. Ex.P-15 is the ROR in respect to suit schedule Item No.2 property wherein the name of Dyamappa S/o Mariyappa has been deleted and name of Kariyappa S/o Dyamappa Myadaneri has been entered as per MR No. 26/29-06-1988. Ex.P-16 to 19 are the hand written RORs in respect to suit schedule item No.2 property which stands in the name of Kariyappa S/o Dyamappa Myadaneri. Ex.P-20 to 31 are the RORs pertaining to suit Item No.2 property which stands in the name of defendant No.3 as per MR No. 31/2005-06 as per sale dated 12-06-2006. Ex.P-32 is the ROR pertaining Sy.

No. 16 standing in the name of defendant No.4 Mariyappa S/o Dyamappa. Ex.P-33 to 36 are the RORs in respect to land bearing Sy. No. 18/1 of Amarapur village which stands in the name of Ningappa S/o Mariyappa. Ex.P-37 is the ROR pertainin to Sy. No. 18/21 which stands in the name of Ningappa. Ex.P-38 is the ROR in respect to Sy. No. 21. It reveals that the name of Hanumawwa and Mariyappa were entered after deletion of name of Ningappa S/o Mariyappa. Ex.P-39 and 40 are the ROR in respect to land bearing Sy. No. 21. It reveals that the names of Hanumawwa, Mariyappa, Dyamappa were entered. Ex.P-41 is the hand written ROR in respect to plaint schedule Item No.2 property. It reveals that land Sy. No.21/E1 measuring 3.06 acres standing in the name of Kariyappa S/o Dyamappa after deletion of name of Dyamapa as per MR No. 19 dated 18-05-1984 and MR No. 6, dated 29-06-1988. Ex.P-42 and 43 are the

RORs pertaining to suit Item No.3 property which stands in the name of Kariyappa. Ex.P-44 is the ROR pertaining to suit item No.1 property which stands in the name of Kariyappa. Ex.P-45 is the ROR in respect to suit schedule Item No.2 property which stands in the name of defendant No.4 as per MR No.31. Ex.P-46 is the ROR in respect to suit schedule Item No.3 property which stands in the name of Kariyappa S/o Dyamappa. Ex.P-47 is the mutation register extract. It reveals that as per sale the name of defendant No.4 mutated in respect to suit schedule Item No.2 property under MR No.31/2005-06. Ex.P-49 is the certifidate issued by Head Master of Government Higher Primary school Kerehalli. It reveals that plaintiff is the daughter of Kariyappa Budagumpi. Ex.P-50 is the certified copy of the registered sale deed dated 03-04-2006. It reveals that Kariyappa S/o Dyamappa has executed sale deed in favour of defendant No.4 in respect to suit schedule

Item No.2 property for sale consideration amount of Rs.90,000/-.

10. The documents produced by the plaintiff clearly reveal that the suit schedule properties are the ancestral properties of the plaintiff and defendant No.1. Further, as per the plaintiff she is the daughter of defendant No.1 and 2 and defendant No.2 is the first wife of defendant No.1 and defendant No.3 is the 2nd wife of defendant No.1 and no issues born out of wedlock of defendant No.1 and 3. The oral and documentary evidence produced by the plaintiff is unchallenged and defendant No.1, 3, 4 remained absent before the Court and have been placed ex-parte.

11. As per Section 6 of Hindu Succession (Amendment) Act-2005, the daughters also considered as coparceners. Hence, the petitioner being the daughter of the defendant No. 1 is entitled to get equal share in the suit

schedule properties. Hence, the plaintiff and defendant No. 1 are entitled to half share in the suit schedule properties. The alienation made by the defendant No.1 who is father of the plaintiff is not binding on the share of the plaintiff. The plaintiff and defendant No. 1 are the daughter and father. As per the plaintiff, the defendant No. 3 is the second wife of the defendant No. 1. Hence, defendant No. 3 is the not the joint family member. Accordingly, I answer point No. 1 partly affirmative and point No. 2 in the affirmative.

12. Point No.3: In view of the reasons assigned above, I proceed to pass the following;

ORDER

The suit of the plaintiff is hereby decreed.

The plaintiff is entitled to $\frac{1}{2}$ share in the suit schedule properties.

It is declare that, the alienation made by the defendant No. 1 infavour of defendant No. 4 in respect to suit schedule item No. 2 property is not binding on the share of plaintiff.

In view of the relationship in between the parties, no order as to costs.

Draw preliminary decree accordingly.

(Dictated to the stenographer typed by her, corrected, signed and then pronounced by me in the open court on this 23rd day of August 2021).

(Smt. Bhavani L.J.)
Sr. Civil Judge and CJM.,
Koppal.

ANNEXURE**List of witnesses examined for the plaintiffs:**

P.W.1 : Yamanavva W/o Beerappa Gollar.

List of documents exhibited for the plaintiffs:

Ex.P-1 to 46 : Hand written RORs.
Ex.P-47 & 48 : Mutation Copies.
Ex.P-49 : School Certificate.
Ex.P-50 : C/c of Registered Sale Deed
Dated 03-04-2006.

List of witnesses examined for the defendants:

- Nil -

List of documents exhibited for the defendants:

- Nil -

(Smt. Bhavani L.J.)
Sr. Civil Judge and CJM.,
Koppal.

