

KAKP030026792021



IN THE COURT OF THE CIVIL JUDGE & JMFC., AT KOPPAL.

Dated this 10th day of April, 2023.

Present : Sri. Harishkumar. M., B.Com. LL.B.

Civil Judge and JMFC, Koppal

ORIGINAL SUIT NO. 225/2021

PLAINTIFF:

Smt. Ambawwa,
W/o Lakshman Kagi,
Age 45 years, Occ: Agril,
R/o Irakallagada village,
Tq: and Dist: Koppal.
(By Sri. A. V. Kanavi, Advocate,)

V/s.

DEFENDANTS:

1. Sri. Ramanna,
S/o Hanamappa Kuri,
Age 60 years, Occ: Agril,
R/o Arhal, Tq: Gangavathi,
Dist: Koppal.
2. Sri. Shivappa,
S/o Ramanna Kuri,



Age 25 years, Occ: Agril,
R/o Arhal, Tq: Gangavathi,
Dist: Koppal.

3. Smt. Mahankalemma,
W/o Basappa Halli,
Age 23 years, Occ: Agril,
R/o Arhal, Tq: Gangavathi,
Dist: Koppal.

4. Smt. Lakshmawwa,
W/o Ramanna Vanaballary,
Age 50 years, Occ: Agril,
R/o Arhal, Tq: Gangavathi,
Dist: Koppal.

**(Defendant No. 1. to 4 are placed
Ex-parte vide order dated 10-10-2022.)**

Date of Institution of the Suit : 04.09.2021.

Nature of the Suit : Suit for Partition and separate possession.

Date of commencement of
Recording of Evidence : 13.01.2023.

Date on which the judgment
Was pronounced : 10.04.2023

Duration : Year/s Month/s Day/s
01 07 06

**Civil Judge & JMFC,
Koppal**

JUDGEMENT



1. The plaintiff herein filed this suit for the relief of partition and separate possession of their share in respect of suit schedule property and such other reliefs against the defendants.
2. The description of suit schedule property as hereunder.
The land bearing Sy.No. 49/B2m measuring 03 acres 13 guntas, situated at Vanaballalri village, Tq and Dist: Koppal.

East	:	Land of Hulagappa Kuri
West	:	Land of Kenchappa Kuri
North	:	Land of Doddappa Kallagudi
South	:	Remaining property of the defendant No.1's brother.
3. The brief case of the plaint is that, the defendant No.1 is the original propositus of family of plaintiff and defendants. Plaintiff is the daughter of defendant No.1, the defendant No. 4 is the second wife of defendant No.1 and defendant No. 2 and 3 are children of defendant No.4. The suit schedule properties are still in the status of joint family and there is no partition effected between the plaintiff and defendants till date. This being the facts the defendants have illegally mutated their names pertaining to suit schedule property. The plaintiff requested to effect portion and separate possession over the suit schedule property but they have failed to do the same. Hence, hence the plaintiff herein filed this suit.
4. After institution of this suit, summons was issued to the defendants and the same has been served to them but they



failed to appear before the court. Hence, the placed *ex-parte* vide order dated 10-10-2022.

5. In order to prove the case of the plaintiff. The plaintiff is examined as PW-1 by way of filing her examination in chief by way of affidavit and Ex. P-1 to P-4 marked through PW-1. On the other hand the defendants are placed *ex-parte*.
6. Heard arguments of learned counsel for plaintiff and perused records.
7. On the basis of the above said pleadings, this court has framed following points:
 1. **Whether the plaintiff proves that, the suit schedule property is joint family property of plaintiff and defendants?**
 2. **Whether the plaintiff proves that, she is entitled for the relief as sought for?**
 3. **What decree or order?**
8. Upon consideration of evidence on record this court answers to the above points are as hereunder:

Point No.1 : In the Affirmative.

Point No.2 : In the Affirmative.

Point No.3 : As per final order for the following:

REASONS

9. **Point No.1:-** It is the specific case of the plaintiff is that the plaintiff and defendants are relatives and the suit



schedule property is still in the status of joint family and there is no partition effected between the plaintiff and defendants till date. This being the facts the defendants have illegally mutated their names pertaining to suit schedule property. The plaintiff requested to effect portion and separate possession over the suit schedule property but they have failed to do the same.

10. In order to prove the case of the plaintiff, the plaintiff is examined as PW-1 and she has filed her examination in chief by way of affidavit and marked Ex. P-1 to 4.
11. This Court has carefully perused the documents produced by the plaintiff, the Ex.P-1 to 4 are the Records of Rights and it reveals that the previously suit schedule property was standing in the name of father of defendant No. 1 thereafter it was mutated in the name of defendant No. 1. So it is clear from these exhibits that the suit schedule property still standing in the name of the original porosities. Even though the plaintiffs have not produced any other documents to show the relationship between the plaintiff and defendants such as Aadhar card, ration card etc, but she has adduced her evidence and the same can be taken into consideration. On the other hand the defendants have failed to appear before the court to contest this suit. That defendants failed to effect the partition was proved as the plaintiffs had not



issued any legal notice to the defendants calling upon them to execution partition, but had filed this suit and the suit summons were duly served to the defendants and even after the service of the summons and knowing very well that the suit is filed seeking partition, the defendants failed to appear before this court and contest the case if any rival claims exist. But in fact the defendants didn't appear nor had filed any written statement.

12. That as the defendant No. 1 is original porosities of the family of the plaintiff and defendant No. 2 to 4 and till date the suit schedule property is stands in his name, hence the plaintiff is successful in succeeding to the property and she is entitle to her share in the suit property. After considering all these facts and circumstances of the case, this court is of the opinion that the Plaintiff has established her case. Further the defendants have not contested the case and they have not chosen to disprove the case of the plaintiff and as there is no contra evidence to disbelieve the case of the plaintiff, it is to be held that the plaintiff has proved that the suit schedule property is joint family property of plaintiff and defendants and she is entitle for her share over the suit property. Hence this court answers point No. 1 in the affirmative.



13. **Point No.2:-** The plaintiff has claimed 1/3rd share in the suit schedule property. To determine this point, it is pertinent to mention that whether the illegitimate children can claim share over their father's property. in the present case the defendant No. 2 and 3 are second wife's children of defendant No. 1.

14. One of the conditions of a Hindu Marriage Act, 1955 as per Section 5 is that neither party has a spouse living at the time of the marriage. If any person contravenes such a condition and goes for second marriage, then such marriage is void under Section 11 of Hindu Marriage Act, 1956. The second wife of a male coparcener has no right over either Coparcenary property or separate or self-acquired property of her husband during his life time and even after his death. Only if husband bequeaths his undivided share in the Coparcenary property or his separate or self-acquired property to his second wife by way of executing Will as per Section 30 of Hindu Succession Act, 1956, then his undivided share in the Coparcenary property and his separate or self-acquired property will go to such second wife. Except this situation, in normal circumstances such second wife will not get any right over either Coparcenary property or separate or self acquired property of her husband. Before determining the entitlement of share of the plaintiffs it is important to discuss that, the question is, can



illegitimate children who satisfies the conditions of Section 6A(d) of Hindu Succession (Karnataka Amendment) Act, 1990 or under Section 6(1) of Hindu Succession (Amendment) Act, 2005 claim their right over ancestral property as a coparcener?. Section 16 of the Hindu Marriage Act, 1955 speaks of legitimacy of children of void and voidable marriages. As per Section 16(3) of Hindu Marriage Act, 1955, such children, though illegitimate are to be treated as legitimate, notwithstanding that marriage was void or voidable. But the said provision confined their right of succession or inheritance only to the properties of their parents and not the properties of any other persons. After considering all these aspects, it is very clear that the illegitimate children cannot claim the status of coparceners with respect to ancestral property and it is only legitimate children who can claim the status of coparceners with respect to ancestral property. Another question that arises for discussion is that after the death of their father, can such illegitimate children claim right over the share of their father in ancestral property as Class I legal heirs or their right is restricted only with respect to the self-acquired properties of their father?.

15. The Hon'ble Apex court of India between Jinia Keotin V/s Kumar Sitaram Manjhi, reported in (2003) 1 SCC 730, between Neelamma V/s Sarojamma, reported in (2006) 9



SCC 612 and between Bharatha Matha V/s R. Vijaya Renganathan, reported in (2010) 11 SCC 483 while discussing the rights of illegitimate children rights has held that illegitimate children would only be entitled to a share of the self-acquired property of the parents and not to the ancestral property.

16. The Hon'ble Apex Court between Revanasiddappa v. Mallikarjun, (2011) 11 SCC 1 at page 9 para 27 though referred the matter to larger Bench but not accepted the interpretation of Section 16(3) given in Jinia Keotin [(2003) 1 SCC 730], Neelamma [(2006) 9 SCC 612] and Bharatha Matha [(2010) 11 SCC 483 : (2010) 4 SCC (Civ) 498. At Para 28, it is held that the legislature has used the word "property" in Section 16(3) and is silent on whether such property is meant to be ancestral or self-acquired. Section 16 contains an express mandate that such children are only entitled to the property of their parents, and not of any other relation. At Para 29 it is held that when such illegitimate children are considered as legitimate as per Section 16(3) of Hindu Marriage Act, 1955, then they cannot be discriminated against and they will be on par with other legitimate children, and be entitled to all the rights in the property of their parents, both self-acquired and ancestral. The Hon'ble Apex court at para No. 38, has further held that in the case of joint family property such children will be



entitled only to a share in their parents' property but they cannot claim it on their own right. Further held that logically, on the partition of an ancestral property, the property falling in the share of the parents of such children is regarded as their self-acquired and absolute property. Further held that in view of the amendment, we see no reason why such children will have no share in such property since such children are equated under the amended law with legitimate offspring of valid marriage. Further held that the only limitation even after the amendment seems to be that during the lifetime of their parents such children cannot ask for partition but they can exercise this right only after the death of their parents.

17. The Hon'ble High Court of Karnataka between Kenchegowda v. K.B. Krishnappa, ILR 2008 Kar 3453 page 3483, while discussing the status of illegitimate children has clearly held that such illegitimate children are not coparceners and they have no right to maintain a suit for partition with respect to ancestral property during the life time of their father. Further it is held that such illegitimate children have to wait till the death of their father and only after his death, they can maintain a suit for partition.
18. In a recent decision, the Division Bench of Honb'le High Court of Karnataka in R.F.A No.916/2014 C/w R.F.A.



CROB. 8/2019 (PAR) between Padmavathi and Another V/s Smt. Jayamma and Others, decided on 15th May, 2020 at Page 86 Para 19, framed 6 points for consideration, out of which, 5th point for consideration is as under:

(v) Whether under Section 16 of Hindu Marriage Act, illegitimate children are entitled to a share in ancestral or Coparcenary property along with other legitimate heirs? The Hon'ble High Court at Page 221 Para 110.2 has answered the above said 5th point for consideration as under:

Under Section 16 of the Hindu Marriage Act, illegitimate children are entitled to a share only in the separate property of their parents and not in the ancestral or Coparcenary property along with other legitimate heirs, so long as the properties are available for partition and not already partitioned or sold by registered instrument/s. After considering the ratio laid down by Hon'ble Apex Court of India and Hon'ble High Court of Karnataka, it is crystal clear that illegitimate children cannot claim the status of coparceners with respect to ancestral property and they have no independent right over the said property. It can be concluded that the illegitimate children will not get share in the ancestral



property in their independent right as coparceners, but they will get share in the property fallen to the share of their father as Class I legal heirs as per notional partition principle along with legitimate children subject to a condition that their father died intestate. If their father during his life time bequeathed his undivided share in the ancestral property to somebody else, then neither legitimate nor illegitimate children can claim such share of their father as per Section 8 to 10 of Hindu Succession Act, 1956. But in the self-acquired or separate property of a male Hindu, both legitimate and illegitimate children will get equal share as per the rules contained under Section 8 to 10 of Hindu Succession Act, 1956 provided the father died intestate. Under the above mentioned observations this court is of the opinion that the plaintiffs are entitle for their share in self acquired property of their deceased father.

19. Now the question is whether the suit schedule property is self acquired property or ancestral property, the plaintiff herein averred that the suit schedule property is joint family property and hence the defendant No. 2 to 4 are not entitle for their share over the suit schedule property, more over the father of defendant No. 2 and 3 i.e. defendant No 1 is still alive. To suffice the said facts the plaintiffs have produced the RORs. On the other hand the defendants have not contested this suit. Admittedly there is no partition



between the plaintiff and the defendants and hence this court of the conclusion that the plaintiff is entitle for her share in the suit schedule property and the defendant No. 2 to 4 are not entitle for their share over the suit schedule property. Hence this court answers Point No.2 in affirmative.

20. **Point No.3:-** For the reasons stated in the point No. 1 and 2, this court is of the opinion that, the suit of the plaintiff is deserves to be decreed and hence this court proceed to pass following:

ORDER

The suit of the plaintiff is hereby decreed with costs.

The plaintiff and the defendant No. 1 are entitled to 1/2nd each share in the suit schedule property.

Draw preliminary decree accordingly.

(Dictated to the Stenographer, transcribed & computerised by her, corrected & initiated by me and then pronounced by me in the open court on this the 10th day of April 2023.)

**Civil Judge & JMFC,
Koppal.**

JUDGMENT



**:: ANNEXURE ::****1. List of witnesses examined on behalf of plaintiff:**

PW-1 : Smt. Ambawwa, W/o Lakshman Kagi.

2. List of exhibits marked on behalf of plaintiff:

Ex. P-1 to 4 : RORs

3. List of witnesses examined on behalf of defendants:

NIL

4. List of exhibits marked on behalf of defendants:

NIL

**Civil Judge & JMFC,
Koppal.**



(Order pronounced in open court vide separate order)

ORDER

The suit of the plaintiff is hereby decreed with costs.

The plaintiff and the defendant No. 1 are entitled to 1/2th each share in the suit schedule property.

Draw preliminary decree accordingly.

**Civil Judge & JMFC,
Koppal.**