

KAMD510005272019



**IN THE COURT OF CIVIL JUDGE AND JMFC.,  
AT NAGAMANGALA.**

Dated, the 29<sup>th</sup> day of August, 2023.

Present

**Sri. Girigowda B.** B.A.L., LL.B.  
Civil Judge & JMFC.,  
Nagamangala.

**O S No.175/2019**

- Plaintiffs** : 1. Thimmegowda  
S/o late.Mallamma,  
Aged about 60 years.  
R/at Eranaghatta village,  
Kasaba Hobli,  
Nagamangala Taluk.
2. Ningamma  
W/o late.Ganganna,  
D/o Late.Honnamma,  
Aged about 47 years.  
R/at Naganahalli village,  
Hirisave Hobli,  
Channarayapatna Taluk
3. Nanjamma  
W/o Rangappa,  
D/o Late.Honnamma,  
Aged about 45 years.  
R/at Kamparahalli village,  
Nonavinakere Hobli,  
Tipturu Taluk.

4. Jayamma  
W/o Manjegowda,  
D/o late. Honnamma,  
Aged about 42 years.  
R/at Megalakoppalu village,  
Nonavinakere Hobli,  
Tiptur Taluk.
5. Sakamma  
W/o late. Mayishettygowda,  
D/o late. Helavaiah,  
Aged about 65 years.  
R/at Shivanahalli village,  
Kasaba Hobli,  
Nagamangala Taluk.

**(By Sri JKR Advocate)**

**-Vs-**

- Defendants :**
1. Shivanna,  
S/o Late Mariyamma,  
Aged about 50 years.
  2. Sri Satya,  
S/o Late Mariyamma,  
Aged about 45 years.  
  
Both are R/o No.490.  
Vigneshwara Nilaya,  
Near Sankalpa Prabha Apartment,  
D.Subbaiah Road, Mysuru.
  3. Smt Kampamma,  
W/o late. Kullegowda,  
D/o Late Helavaiah,  
Aged about 60 years.  
R/at H.Bhuvanahalli village,  
Bindiganavile Hobli,  
Nagamangala Taluk.

**(D1 to 3 Placed Exparte)**

1. Date of institution of the suit : 18.06.2019.
2. Nature of the suit : Partition and Separate Possession.
3. Date of the commencement of recording of the evidence : 09.03.2023.
4. Judgment pronounced on : 29.08.2023.
5. Total duration : Year/s Month/s Day/s  
04 02 11

**(Girigowda B.)**  
Civil Judge & JMFC.,  
Nagamangala.

### **J U D G M E N T**

The present suit is filed by the plaintiffs for partition and separate possession of their 3/5th share in all the suit schedule properties by metes and bounds.

**The case of plaintiff as per plaint averments is as under:-**

2. One Helavaiah through his wife Devamma has got 5 children by name 1. Mallamma ie., mother of plaintiff No.1. 2. Mariamma ie., mother of defendant No.1 & 2. 3. Honnamma ie., mother of plaintiff No.2 to 4. 4. Sakamma ie., plaintiff No.5. 5. Kempamma ie., defendant No.3. The plaintiffs and defendants consist of joint family. Hence, the plaintiffs and defendants are become the coparceners and joint family members.

3. It is further submitted that the suit schedule properties are all ancestral and joint family properties of

aforesaid Helavaiah ie., father of plaintiff No.5 and defendant No.3, grand father of plaintiff No.1 to 4 and defendant No.1 and 2. The aforesaid Helavaiah was died long back leaving behind the plaintiffs and defendants as his legal heirs to succeed his properties. After the death of father of defendant No.4 & 5 the khatha of the suit schedule property properties were changed in the name of mother of defendant No.1 & 2 name Mariyamma without the consent of plaintiffs and other defendants and she is managing the joint family affairs and joint Mariyamma the defendant No.1 is managing the joint family affairs and joint family properties. But the khata of the suit schedule properties are standing in the name of Mariyamma ie., mother of defendant No.1 and 2. The plaintiffs and defendants are all coparceners of the Hindu undivided joint family and they are all in joint possessions of the suit schedule properties. The suit schedule properties are agricultural and garden lands and yielding very good income to the joint family. There is no kind of partition taken place in the joint family by metes and bounds and still plaintiffs and defendants are in the joint family possession of the suit schedule properties.

4. It is further submitted that even though the family is getting very good income from the joint family properties, the defendant No.1 is colluding with other defendants, started misusing and mismanaging the joint family income and planning to alienate and creating encumbrance in respect of the joint family properties without any family necessity and benefit. Under this circumstances, the plaintiffs have no confidence on

the defendants as to safeguard their interest over the suit schedule properties and demanded the defendant No.1 for partition in the month of May, last week, 2019 of their share in the suit schedule properties. But the defendant No.1 has refused for partition of suit schedule properties. Hence, having no other alternative, the plaintiffs have filed this suit for partition and separate possession of their legitimate share in the suit schedule properties. The cause of action for the suit arose in the month of May, last week, 2019, when the defendant No.1 has refused to effect the partition in respect of the suit schedule properties and subsequently also within the jurisdiction of this Court. Hence, the plaintiff filed this suit.

5. After registration of suit, the suit summons was issued to the defendants. The defendant No.1 to 3 remained absent, hence placed *exparte*. The case posted for plaintiffs evidence.

6. On the basis of above said pleadings, the following points arise for consideration:

1. Whether plaintiffs prove that the suit schedule properties are ancestral and joint family property of parties to the suit and they are in joint possession and enjoyment of the same?
2. Whether plaintiffs are entitled for partition and separate possession of their 3/5th share in all the suit schedule properties?

3. What order or decree?

7. The plaintiff No.1 has been examined as PW-1 and got marked 8 documents in his favour at Ex.P1 to Ex.P8.

8. Heard and perused the materials placed on record.

9. My findings on the above points are as follows:

Point No.1 : In the **Affirmative.**

Point No.2 : In the **Affirmative.**

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

### **REASONS**

10. **Point No.1 and 2 :-** These points are taken together for consideration in order to avoid repetition of facts and reasoning.

11. To prove the case of the plaintiffs, the plaintiff No.1 has been examined and filed his evidence affidavit by reiterating the averments made in the plaint and got marked Ex.P1 to P8. Ex.P1 is the Genealogical tree, Ex.P2 to 5 are the RTCs extracts in respect of suit schedule properties, Ex.P6 is the Endorsement, Ex.P7 and 8 are the Mutation register extracts.

12. In order to prove the relationship between the parties PW-1 adduced his oral evidence and got marked genealogical tree as per Ex.P1. The defendants neither challenged the case of plaintiffs by filing their written statement nor chosen to contest the case of plaintiffs and as such the oral and documentary

evidence adduced by the plaintiffs to establish relationship between parties is remained unchallenged. Hence, this court is of the opinion that there is no dispute with regard to the relationship of the parties.

13. This court has carefully considered the oral and documentary evidence adduced by the plaintiffs. After considering Ex.P2 to Ex.8 it is very much clear that only the name of defendant No.1 & 2 mother is mutated in the revenue records in respect of suit schedule properties and source of entry is shown as by virtue of inheritance.

14. On careful evaluation of oral and documentary evidence adduced by PW-1 it is very much evident that there is no partition in the manner known to law between the joint family members in the suit schedule properties. Mere separate entry in the revenue records does not ouster the plaintiffs from joint possession in the suit schedule properties. It is settled principle of law that possession of one of joint family member is the possession of all other members of the joint family unless it is established that said separation has taken place through the modes recognized under the law. Said mutation entries in the records of rights are only for the fiscal purpose for collecting revenue, said documents don't constitute documents by which title is created, hence said documents could not be presumed as documents for having taken place partition. The revenue entry does not create any right or extinguish any right of the parties in respect of suit schedule properties. The mutation entry and consent to effect mutation entries can only be said that it is only

for family arrangements, mutation entry does not confer any rights unless same is supported by any document. Hence, in the absence of any contrary material to prove the disruption of joint family status, the mutation entry and consent given to revenue authorities can only be said that it is only for family arrangements. Under Hindu law presumption is that Hindu family is presumed to be joint till the contrary is proved. Hence, the plaintiffs are entitled to the relief claimed in the suit. With these observations, this Court has answered **Point No.1 and 2 in the Affirmative.**

15. **Point No.3** : For the aforesaid discussion on Point No.1 and 2, this court proceed to pass the following:

### **ORDER**

**The suit filed by the Plaintiffs is partly decreed.**

**The Plaintiff No.5 and defendant No.3 are each entitled to 1/5th share in all the suit schedule properties and plaintiff No.1 is entitled to 1/5th share of Smt.Mallamma, the defendant No.1 & 2 are together entitled to 1/5th share of Smt.Mariyamma and plaintiff No.2 to 4 are also together entitled to 1/5th share of Smt.Honnamma in all the suit schedule properties.**



**There shall be a final decree proceedings to carve out share of each sharer in all the suit schedule properties as per Order XX Rule 18 R/w Sec.54 of CPC.**

**Draw preliminary decree accordingly.**

**There is no order as to costs, in the circumstances of the case.**

(Dictated to the stenographer directly to the computer, corrected and pronounced by me in the Open Court on this the **29<sup>th</sup> August 2023**)

**(Girigowda B.)**  
Civil Judge and JMFC.,  
Nagamangala.

**Annexure**

**Witness examined on behalf of plaintiff :**

PW-1 : Devamma.

**Documents marked on behalf of plaintiff :**

Ex.P1 : Genealogical tree.

Ex.P2 to 5 : RTC extracts.

Ex.P6 : Endorsement.

Ex.P7 and 8 : Mutation register extracts.

**Witnesses examined on behalf of defendants:**

- N I L -

**Documents marked on behalf of defendants:**

**- N I L -**

**Civil Judge and JMFC.,  
Nagamangala.**