

**TITLE SHEET FOR JUDGMENTS IN SUITS
IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC ,
AT PANDAVAPURA**

**PRESENT:-
Sri.B.K.RAVIKANTHA B.A,.LL.B
Senior Civil Judge & JMFC .,
Pandavapura**

DATED THIS THE 24th DAY OF SEPTEMBER 2016

O.S.No.26/2013

PLAINTIFFS:- 1. Shekar S/o Late Eranna, aged about 37 years,
2. Nagaraju S/o Late Eranna, 32 years
Both are R/o Baleathiguppe village,
Kasaba Hobli, Pandavapura Taluk,
Mandya District

(Pleader by Sri.KKG, Advocate)

-VS-

DEFENDANTS: 1) Parvathamma W/o Late Eranna, aged about 55 years
- 2) Shivanna S/o Late Eranna, aged about 32 years
3) Smt. Asharani W/o Shivanna,
4) Jayamma D/o Eranna, aged about 50 years, ,

All R/o Baleathiguppe Village,
Kasaba Hobli, Pandavapura
Taluk, Mandya District.

(Pleader D1 & 2 by Sri.CRD, D3 by
Sri. NBG, D4-by Sri.CLV, Advocates)

Date of Institution of Suit : 06.04.2013

Date of Commencement of
Recording of Evidence. : 12.02.2014

Nature of Suit : **PARTITION**

Date on which the judgment
is pronounced : **24.09.2016**

	Year/s	Month/s	Day/s
TOTAL DURATION:	03	05	18

(B.K.RAVIKANTHA)
C/c. Senior Civil Judge & JMFC.,
PANDAVAPURA

J U D G M E N T

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1. This is a suit filed by the Plaintiffs seeking partition and separate possession of their share in the suit schedule properties.
2. The Brief facts of the plaintiff's case are that, the plaintiffs and Defendant No.2 are the children of defendant No.1 and deceased Eranna . The defendant No.3 is the wife of 2nd defendant. The deceased Eranna died on 8.9.2002. The plaintiffs and defendants are the members of Hindu undivided jointly family and the suit

schedule properties are the ancestral and joint family properties, and they are in joint possession and enjoyment of the properties . The schedule properties have been transferred in the name of the 1st defendant on the basis of inheritance after the death of her husband. Thus the 1st defendant is the kartha of the joint family. The defendant No.1 in collusion with the defendant No.2 and 3 has completely neglected the interest of the plaintiffs in the suit schedule properties and she is making all efforts to dispose of properties in favour 3rd persons for illegal needs and necessities. Recently plaintiffs came to know that the defendants have sold the schedule item No.1 under a nominal sale deed dtd: 2.3.2013 and has also got created documents in respect of the properties. Therefore, the said transaction and the documents created does not binding on the plaintiffs. Hence the suit.

3. On the other hand, the defendant 1 to 4 have put their appearance through their respective counsels, only defendant No.3 has filed written statement and contested the suit . The defendant No.1, 2 and 4 have not selected to contest the suit.
4. In the written statement the defendant No.3 has denied all the plaint averments . Further contended that there was oral partition in the family about 2 years ago and as per the said partition the schedule item No.1 property

was given to the 1st defendant and the schedule item No.2 was divided in 3 shares and the same was allotted to the share of plaintiffs and defendant No.2 . Accordingly the plaintiffs and defendant No.2 are in possession and enjoyment of their respective share in the schedule item No.2 property as absolute owners thereof. Further the defendant No.1 has got dug bore well in the schedule item No.2 property and she has also performed the marriages of the plaintiffs and defendant No.2 by raising loans and in order to discharge the said loans the defendant No.1 has sold schedule item No.1 in favour of defendant No.3 under registered sale deed dtd: 2.3.2013 . So, the defendant is a bonafide purchaser for value without notice of the schedule item No.1 property and she is in possession and enjoyment of the property as absolute owner thereof. The plaintiffs are not entitled for any share in the suit schedule properties . The suit of the plaintiffs is not maintainable for non inclusion of a house property. Further, it is contended that the suit has not been properly valued and the court fee paid by the plaintiffs is insufficient. The plaintiffs ought to have been paid the court fee based on the market value of the suit properties. The suit of the plaintiffs without seeking cancellation of registered sale deed dtd: 2.3.2013 is not maintainable. Hence pray to dismiss the suit.

5. On the basis of the above facts following issues are framed.

I S S U E S

- 1 Whether plaintiffs prove that the suit schedule properties are joint family property?**
- 2 If so, Whether the plaintiffs prove that they have been in joint possession over the suit schedule property alongwith defendant No.1 and 2?**
- 3 Whether the defendant No.3 proves that she is the bonafide purchaser of item No.1 of suit schedule property??**
- 4 Whether the defendant No.3 proves that the suit is not maintainable for non illusion of house property ?**
- 5 Whether the defendant No.3 proves that without seeking cancellation of registered sale deed dtd: 2.3.2013 the suit is not maintainable ?**
- 6 Whether the defendant No.3 proves that suit is not properly valued for the purpose of court fee?**
- 7 Whether the plaintiffs are entitled for 2/3rd share in respect of suit schedule property?**
- 8 What order or decree?**

6. In support of their case the plaintiff No.2 is examined as PW1 and got exhibited 7 documents as per Ex.P1 to 7. .

On the other hand , Defendant No.3 examined as DW 1 and got marked no documents on her behalf.

7. Heard the arguments of both sides. My answers to the above said issues are as under;

ISSUE NO.1: In the Affirmative
ISSUE NO.2: In the Affirmative,
ISSUE NO.3: In the Negative
ISSUE NO.4: Do not survive
ISSUE NO.5: In the Negative
ISSUE NO.6: In the Negative
ISSUE NO.7: In the Affirmative,
A N D
ISSUE NO.8: As per final order
for the following;

R E A S O N S

8. **ISSUE NO.1 to 3 :-** It is the specific case of the plaintive that the suit schedule properties the ancestral and joint family properties of themselves and the defendant No.1 and 2 and they are in joint possession and enjoyment of the same.
9. On the contrary as noticed above, the defendant No.1 and 2 inspite of putting their appearance through their counsel, have not selected to contest the case of the plaintiffs. It is only the defendant No.3 who is said to have purchased the schedule item No.1 from the defendant No.1 has contested the case and contended that the schedule properties have been partitioned under

oral partition about 2 years ago and as per the said partition the schedule item No.1 property was allotted to the defendant No.1 and the schedule item No.2 property allotted to the shares of the plaintiffs and the defendant No.2. The defendant No.3 is the bonafide purchaser of the schedule item No.1 property .

10. At the outset it is to be noted that , the defendant No.3, even though she has raised a specific contention in her written statement about previous partition in the schedule properties and allotment of schedule item No.1 property to the share of defendant No.1 and schedule item No.2 property to the shares of plaintiffs and defendant No.2 under the said partition, but in order to substantiate the said contention , has not made available any thing on the record. Thus there is no iota of evidence on the record to substantiate the contention of the defendant No.3 with regard to the previous partition in respect of the suit schedule properties. In the absence of proof with regard to the previous partition in the schedule properties, the court has to draw a clear inference that all the schedule properties are the joint family properties .

11. The 2nd plaintiff who is examined as PW1, has filed affidavit in lieu of examination in chief , wherein he has reiterated the entire averments of the plaint and has categorically stated that all the suit schedule properties

are the undivided joint family properties of themselves and the defendant No.1 and 2 and they are in joint possession and enjoyment of the same. Apart from this, the plaintiff has also produced RTC extracts, mutation documents and self assessment extract pertains to the suit schedule properties, which reveals that the suit schedule item No.1 to 3 properties including a house property situated at Baleathiguppe village, Kasaba Hobli, Pandavapura taluk were mutated in the name of deceased Late Eranna , who is none other than the father of the plaintiffs No.1 , 2 and defendant No.2 and the husband of defendant No.1 and further after the death of said Eranna the properties have been mutated in the name of the 1st defendant on the basis of inheritance. Thus from the revenue records also it becomes very clear that the suit schedule properties are the ancestral and joint family properties acquired by the defendant No.1 through her husband Erannna by virtue of inheritance. Therefore , there is no doubt that the suit schedule properties becomes ancestral and joint family properties in the hands of defendant No.1 .

12. The plaintiff /PW 1 has been cross examined by the defendant No.3. On going through the entire cross examination of PW 1 it becomes clear that there are absolutely no specific suggestions denying the nature and characteristics of the schedule properties. Further at

para No.3 of his cross examination it has been suggested that the schedule item No.1 has been sold after a partition in the family properties, but the same has been denied by the PW 1. Further, it is specifically suggested that the schedule item No.1 property had been sold for the legal necessities of the family, even the said suggestion has also been denied by PW 1.

13. As has been stated above, the defendant No.3 has entered the witness box and examined herself as DW 1 and she has reiterated the averments of her written statement in the evidence, but she has not selected to produce any documents on her behalf. In the course of cross examination on behalf of the plaintiffs, it has been specifically suggested that the sale has been executed only for nominal purposes and she has intentionally withheld the said document before the court apprehending the true facts coming out therefrom with the production of the said document , but the same has been denied by DW 1.

14. In the case on hand from the evidence and material placed what emerges is that , the plaintiffs have made out a probable case on their behalf to establish their case that the suit schedule properties are the undivided joint family properties of themselves and the defendant No.1 and 2 and they are in joint constructive possession and enjoyment of the schedule properties alongwith the

defendant No.1, as the possession of one member of the family amounts possession of all. On the other hand , though the defendant No.3 has specifically contended that she is the bonafide purchaser of schedule item No.1 property from the defendant No.1 , but except self serving testimony of the defendant herself , in fact nothing has been brought out on the record in this regard . The defendant has even not chosen at least to produce the sale deed document before the court. Therefore an adverse inference has to be drawn against the defendant No.3 for having withheld to produce the material document before the court as per sec. 114 of the Indian Evidence Act. Therefore , the defendant No.3 has absolutely failed to prove her case in accordance with the pleadings . In the light of the said reasons, **I answered issue No.1 and 2 in the affirmative and issue No.3 in the negative.**

15. **ISSUE NO.4:-** It is the specific case of the defendant No.3 the suit of the plaintiffs is not maintainable for non inclusion of house property. But subsequently, the said house property seems to have been included to the suit. **Therefore, the said issue do not survive for consideration. Accordingly the Issue No.4 is answered.**
16. **ISSUE NO.5 :** It is the specific case of the defendant No.3 that suit of the plaintiffs without seeking

cancellation of registered sale deed dtd: 2.3.2013 is not maintainable . As already noticed above, the defendant No.3 has not chosen or selected to produce the very material document ie, registered sale deed dtd: 2.3.2013 before the court . Therefore, when the document itself which plays pivotal role in establishing the case of the defendant No.3 , has not been produced , the said contention of the defendant does not survive for consideration. Hence, **in the light of the above reasons , I answered Issue No.5 is negative.**

17. **ISSUE NO.6:** it is the specific contention of the defendant that the suit of the plaintiffs has not been properly valued for the purpose of court fee. There is absolutely no evidence to prove the said contention . Further, on going through the plaint makes it clear that the plaintiffs have paid 15 rupees court fee on the basis of deemed market value in respect of their 2/3rd share. Therefore the defendant has failed to prove that suit has been not properly valued for the purpose of the court fee. **In the light of the above reasons , I answered Issue No.6 in the negative.**

18. **ISSUE NO.7:-** In the case on hand, the plaintiffs have proved that the suit schedule properties are the undivided joint family properties of themselves and the defendant No.1 and 2 . The record reveals that , with the

leave of the court the defendant No.4 one Smt. Jayamma who is also a daughter of Late Eranna has been impleaded to the suit. The plaintiffs No.1 and 2 , the defendant No. 2 and 4 being the sons and a daughter of late Eranna and defendant No.1 being the wife of late Eranna, becomes his legal representative and all of them are entitle to take equally in the properties left by late Eranna. Accordingly the plaintiffs are entitled to take their 1/5th share each in the suit schedule properties by meets and bounds . **In the light of the above reasons , I answered Issue No.7 is affirmative.**

19. **ISSUE NO.8:-** In view of the above discussion, I proceed to pass the following order:

O R D E R

Suit of the plaintiffs is hereby decreed with costs.

The plaintiffs and defendant No.1 , 2 and 4 are entitled for 1/5th share each in the suit schedule properties by meets and bounds.

Draw Preliminary Decree accordingly.

(Dictated to Typist through online, typed by her, corrected by me & pronounced it in open court this the 24th day of SEPTEMBER -2016)

**(B.K.Ravikantha)
Sr.Civil Judge & JMFC,**

PANDAVAPURA.

ANNEXURE

WITNESSES EXAMINED FOR THE PETITIONER

PW1 : Nagaraju

DOCUMENTS MARKED FOR THE PETITIONER

Ex.P1-4 : RTC
Ex.P-6 : Mutation extract
Ex.P7 : Self assessment document

WITNESSES EXAMINED FOR THE RESPONDENT :

DW1 : Asharani

DOCUMENTS MARKED FOR THE RESPONDENT :

NIL

(B.K.Ravikantha)
C/c.Prl.Senior Civil Judge & JMFC.,
Pandavapura.

(Judgment pronounced in open court,
vide separate order)

O R D E R

**Suit of the plaintiffs is hereby
decreed with costs.**

**The plaintiffs and defendant
No.1 , 2 and 4 are entitled for 1/5th
share each in the suit schedule
properties by meets and bounds.**

**Draw Preliminary Decree
accordingly.**

**C/c.Prl.Senior Civil Judge & JMFC.,
Pandavapura.**

