

From No.9 (Civil) Title Sheet for Judgments in suit (R.P. 91)	TITLE SHEET FOR JUDGMENTS IN SUITS IN THE COURT OF THE ADDL. CIVIL JUDGE & JMFC., AT PANDAVAPURA.
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Present

Sri.Sachinkumar Shivapuji., B.A.L, L.L.B.
Addl. CIVIL JUDGE & J.M.F.C.
PANDAVAPURA

DATED THIS THE 7th day of October 2021

Original Suit.No.231/2000

Plaintiff/
Plaintiffs :-

Channappa dead by L.Rs

1. Mahadevamma, major, w/o
late Channappa,
2. Ningappa, major,
3. Parvathamma, major, w/o
Raju, r/o Baby village,
Chinakurali hobli,
Pandavapura taluk,
4. Indramma, major, w/o
Shivanna, Urmaru
Kasalagere, Mandya taluk,
Mandya
5. Basavaraju, major,
6. Puttaswamy, major,

Plaintiffs No.1, 2, 5 & 6 are wife
& children of late Channappa,
All are residents of Belatiguppe
village, Kassaba hobli,
Pandavapura taluk,

(By Sri. SAN, Advocate)

-V/S-

Defendant/
Defendants :-

1. Kashi, dead by L.Rs
1 a) Parvathamma w/o late

Kashi, major,

1 b) Mahadeva s/o late

Kashi, major,

Both are residing at Bela-

tiguppe village, Kasaba

hobli, Pandavapura taluk,

1 c) Shivamma d/o late

Kashi, major, Ragimud-

danahalli village, Kothathi

hobli, Mandya taluk,

2. Mahadevappa, major, s/o
late Kashiningappa,

3. Smt. Jayamma, major, w/o
Siddappa,

4. Madesha, minor, next friend
natural mother Jayamma,
3rd defendant.

5. Smt. Kempadevamma, ma-
jor, w/o Siddappa, d/o Dod-
dathimmaiah, r/at Harala-
halli village, CA Kere hobli,
Maddur taluk,

6. Smt. Mahadevamma, major,
d/o Siddappa, minor by
next friend mother, Kem-
pamma, 5th defendant,
Defendants No.1 to 4 are R/
o Belatiguppe village, Pan-
davapura taluk, Mandya
district.

7. Nagarajamma w/o
Mariyappa, dead by L.Rs

8. Mariyappa H/o Nagara-
jamma, 80 years,

9. Chamappa, aged 60 years,

10. Nanjunda, aged 56
years,

11. Shivaswamy, aged 47

- years,
 12. Shankara, aged 47
 years,
 13. Shiva, aged 43 years,

Defendant No.8 is the husband of late Nagarajamma, and defendants No.9 to 13 are children of Nagarajamma, All are residents of Billenahalli village, Mallenahalli post, Dudda hobli, Mandya taluk,

(Sri.BSA/LV, Adv., for D-1 to 7, D-8 to 13 were placed exparte)

Date of institution of the suit :-

6.12.2000

Nature of the suit(Suit on pronote, suit for declaration and possession suit for injunction, etc.)

PARTITION SUIT

Date of the commencement of recording of the evidence:

17.02.2004

Date on which the Judgment was pronounced.

07.10.2021

Total duration

Year/s
20

Month/s
10

Day/s
01

(Sachinkumar Shivapuji)
 Addl. CIVIL JUDGE & J.M.F.C.,
 PANDAVAPURA

:-JUDGMENT:-

1. The plaintiff has filed this suit against the defendants for the relief of partition & separate possession over the suit property.

2. **BRIEF FACTS OF THE CASE OF THE PLAINTIFF**

IS AS UNDER:- The plaintiff stated that one Kashiningappa had 4 sons by name Channappa, Kashi, Mahadevappa and Siddappa. The said Siddappa is not known from past 3 years and the said Siddappa had two wives, they are Kempadevamma and Jayamma. The Mahadevamma is the daughter of Siddappa through Kempadevamma and Madesha is the son of Siddappa through Jayamma, whereabouts of the Siddappa is not known, his wife and children made as a party. Further the father of the plaintiff and defendants No.1 to 3 is no more. He died about 10

years back, the plaintiff and defendants are the members of undivided Hindu Joint Family, suit property is the ancestral property of the plaintiff and defendants, they jointly enjoying the suit property. Further the differences arise in between the plaintiff and defendants in the last one year, defendants No.1 to 3 have colluding with each other and started to show hostile attitude towards the plaintiff, hence, the plaintiff to take his legitimate share in the suit property and also demand his share on 20th January 2000, the defendants No.1 to 3 are postponing the one and other way to effect the partition. Therefore, the plaintiff has constrained to file this suit.

3. In spite of service of summons, the defendants No.1 to 4 appeared through their counsel and filed written statement, stating that the suit of the

plaintiff is not maintainable either under law or on facts. Further the daughter of Kashiningappa is not party in this suit, therefore, the suit of the plaintiff is non-joinder of necessary party. Further the defendants stated that, the plaintiff and defendants are not joint family members, the suit property is not the joint family property of the plaintiff and defendants. Further contended that, the plaintiff is a versatile litigant, he took away his share from the father and separated from joint family about 30 years ago, out of property, 27 guntas allotted to the share of the plaintiff and he sold the land on 15.11.1974. Further the Kashiningappa prepared a palupatti on 10.9.1997 to which all the parties are signatory. In the suit schedule property, each of 3 sons, defendants No.1 & 2 and Siddappa were allotted 34 guntas and all in separate possession

and enjoyment of the same and plaintiff filed petition before Tahasildar, claiming 1/4th share which was not accepted and plaintiff is not entitled to maintain the suit u/sec.6 of Hindu Succession Act being a separated son from his father and also he is estopped from claiming his share being attester of the document of 10.9.1997. The suit is bad for not bringing all the properties. Further the suit of the plaintiff is not maintainable without seeking reopening earlier partition is not maintainable. Further defendants No.1 & 2 and Siddappa exclusive separate possession of 34 guntas each given by their father, openly hostile to the title and adverse to the rights, as such, they are perfected their right being in continuing possession from 10.9.1997. further this court have pecuniary jurisdiction the suit value is more than Rs.1 lakhs

and the plaintiff has paid insufficient court fee.

Hence, the defendants prays to dismiss the suit.

4. During pendency of the suit, the plaintiff and defendant No.1 reported to be dead, thereafter their L.Rs brought on record to proceed the case. Further the plaintiff has implead defendant No.7 as a sister of plaintiff who is the one of daughter of Kashiningappa. In spite of issuance of notice, she reported to be dead, thereafter her L.Rs brought on record. Further in spite of issuance of summons, the L.Rs of defendant No.7 absent before the court and placed ex parte.

5. Considering the pleadings of the parties, this court has framed the following

I S S U E S

- 1 Whether the plaintiff proves that the suit schedule properties are joint family properties of plaintiff and defendants and are enjoying the

- same in a joint family?
- 2 Whether the defendants proves that, the plaintiff took his share from his father about 30 years back and a document was written evidencing the same on 10.9.1997?
 - 3 Whether the defendants prove that, the suit is not maintainable without seeking reopening of prior partition?
 - 4 Whether defendants prove that, the suit is not maintainable to mis-joinder of parties?
 - 5 What order or decree?

Addl. Issues

- (1) The court fee paid is insufficient?
- (2) Whether defendants prove that, this court has no pecuniary jurisdiction as pleaded in para No.10 of the written statement?

6. To substantiate the claim, the plaintiff filed examination in chief by way of affidavit and examined as Pw1 and got marked Ex.P1. Pw1 cross-examined by defendants counsel. On the

other hand, to substantiate the defence, the defendants absent before the court, hence, the evidence is taken as nil. The case is posted for arguments.

7. Heard the arguments by counsel for the plaintiff and defendants and their counsel absent. Hence, the arguments on behalf of defendants taken as nil.

8. My findings to the above issues are as follows:

Issue No.1: In the affirmative;

Issue No.2: In the negative;

Issue No.3: In the negative;

Issue No.4: In the negative;

Addl. Issue No.1: In the negative;

Addl. Issue No.2: In the negative;

Issue No.5: As per final order, for the following:

REASONS

9. ISSUE NO.1: Pw1 by name Channappa filed examination in chief by way of affidavit and and examination in chief of Pw1 reiterated the plaint averments. It is worthless to discuss the case of the plaintiffs, but the nutshell case of the plaintiff is that the plaintiff has filed this suit against the defendants for the relief of partition and separate possession. The plaintiff has filed document which is marked as Ex.P1. Ex.P1 is the RTC extract in respect of suit property, it reveals that, the khatha of the suit property stand in the name of Kashiningappa who is the father of the plaintiff. Further his name is entered in column No.9 as a owner of suit property and also entered column No.12 as a cultivator of the suit property. The name of the father of plaintiff and defendants No.1 and 2

entered in Ex.P1 through RR No.780, it was reflected in column No.10 of Ex.P1. It is pertinent to note here that the present case on hand, the plaintiff is the son of Kashiningappa and said father having 4 children i.e., the plaintiff and defendants No.1 & 2 and Siddappa and also he having sister by name Nagarajamma who is one of the daughter of Kashiningappa. Further the plaintiff stated that the suit schedule property is the ancestral property of the plaintiff and defendants and he was demanded his share to the defendants, but the defendants colluding with each other, postponing the effect of partition. Therefore, the plaintiff come up with the present suit. Further the defendants stated that, the plaintiff has taken his share past 30 years from his father and also separated from joint family, therefore, there is no

joint family existed in between the plaintiff and defendants. Moreover the father of plaintiff Kashiningappa prepared a palupatti dated 10.9.1977 and defendants taken each 34 guntas in the said property and separated from the joint family. In the present case on hand, though the defendants appeared but they have not examined to substantiate the defence. Further the documentary evidence on record, the khatha of the suit property stand in the name of Kashiningappa who is father of plaintiff and defendants No.1 & 2. Moreover the defendants admitted the relationship with the plaintiff and they have not denied the relationship between themselves and plaintiff. Furthermore the defendants have not produced palupatti dated 10.9.1977 to show there was a earlier partition between the plaintiff and defendants. Therefore,

whatever contention taken by the defendants is not proved. Therefore, this court is of the opinion that, the plaintiff has proved he is the member of joint family of the plaintiff and defendants and also he is entitled share in the suit property. Further the entitlement of share is concerned, the plaintiff is the son of Kashiningappa and the said Kashiningappa having 4 sons and one daughter but admittedly he was no more. Therefore, the plaintiff is entitled 1/5th share over the suit property and defendants No.1 & 2 are entitled each 1/5th share and defendants No.3 to 6 being the legal heirs of Siddappa, they are entitled together 1/5th share and defendant No.7 being the daughter of Kashiningappa is entitled 1/5th share over the suit property. Hence, this court inclined to hold issue No.1 answered in affirmative.

10. ISSUE NO.2 to 4 : Since these 3 issues are inter-connected with other, hence, to avoid repetition of facts, they are taken up together for common discussion.

11. The defendants contended that there was a partition about 30 years back on 10.9.1977, therefore, without seeking reopening the earlier prior partition, the suit of the plaintiff is not maintainable. Further the one daughter of Kashiningappa is not made as a party in this suit. It is pertinent to note here that in the present case on hand, though the defendants filed written statement, but they have not adduced evidence to prove their defence. In the absence of the documentary evidence of palupatti dated 10.9.1977, this court cannot presume there was a partition in between the plaintiff and defendants.

Moreover the plaintiff made as a party one of the daughter of Kashiningappa who is the defendant No.7. Therefore, the suit is maintainable and it is not bad for non-joinder of necessary party. All the children of Kashiningappa made as a party in this suit. Further without producing the documentary evidence of panchayath palupatti dated 10.9.1977, this court cannot presume the plaintiff and defendants were separated and there is no concept of joint family in between the plaintiff and defendants. Hence, this court is of the opinion that the defendants is failed to prove their defence by adducing oral and documentary evidence. Therefore issues No.2 to 4 inclined to hold answered in negative.

12. ADDL. ISSUE NO.1 & 2 : Since these two issues are inter-connected with other, hence, to avoid

repetition of facts, they are taken up together for common discussion.

- 13.** The court is concerned, the plaintiff has filed the suit for partition and he has paid court fee as per Sec.35 (2) of Karnataka Court Fee and Suit Valuation Act. Further the defendants taken contention this court has no pecuniary jurisdiction in respect of the pecuniary jurisdiction, the defendants have not adduced any evidence and have not placed any documents to show the suit property is more than Rs.1 lakh. Further the plaintiff claiming only one share in the suit property, he has paid the court fee towards his share as per Sec.35 (2) of aforesaid Act, which is correct and sufficient. Therefore, the Addl. Issue No.1 & 2 answered in negative.

14. ISSUE No.5: For the reasons discussed

supra, I proceed to pass the following:

ORDER

The Suit of plaintiff is hereby decreed.

Further the plaintiff is entitled 1/5th share over the suit property.

Considering the relationship of the parties, no order as to cost.

Draw decree accordingly.

(Dictated to Stenographer, transcribed by him, typed by him, corrected by me and then pronounced it in open court this the 7th day of October 2021)

(Sachinkumar Shivapuji)
Addl. CIVIL JUDGE & J.M.F.C.,
PANDAVAPURA

ANNEXURE

1. WITNESSES EXAMINED FOR THE PLAINTIFFS

PW-1 : Channappa

2. DOCUMENTS MARKED FOR THE PLAINTIFFS

Ex.P1 : RTC extract

3. WITNESSES EXAMINED FOR THE DEFENDANT

Nil

4. DOCUMENTS MARKED FOR THE DEFENDANT

Nil

(Sachinkumar Shivapuji)
Addl. Civil Judge & JMFC.,
Pandavapura.

Judgment pronounced in the open court vide
separate Judgment

O R D E R

The Suit of plaintiff is hereby decreed.

Further the plaintiff is entitled 1/5th
share over the suit property.

Considering the relationship of the
parties, no order as to cost.

Draw decree accordingly.

(Sachinkumar Shivapuji)
Addl. CIVIL JUDGE & J.M.F.C.,
PANDAVAPURA