

IN THE COURT OF ADDL. CIVIL JUDGE &
JMFC AT SRIRANGAPATNA.

DATED THIS THE 14th DAY OF JULY 2015

:PRESENT:

**SRI. S.M. CHOUGALE, B.A., L.L.B.,
ADDL. CIVIL JUDGE & JMFC.,
SRIRANGAPATNA.**

O. S. No. 194/2013

Plaintiffs:- 1. Smt. B.Poornima W/o late Basavegowda, Aged about 36 years, R/at Kacchigere village, Hanakere Post, Mandya Taluk and District.
2. Smt. Lakshmi W/o Satisha, D/o Late Basavegowda, aged about 34 years,
3. Smt. Nagamani, W/o K.Kumar, D/o late Basavegowda, aged about 32 years,
4. Smt. Sarala W/o Ashoka, D/o late Basavegowda, aged about 28 years,
Plaintiff No.s 2 to 4 are the R/of Arcot Road, Ganjam, Srirangapatna Taluk, Mandya District.
5. Smt. Suvarna @ Shruthi, W/o Nagaraju, D/o late Basavegowda, aged about 20 years, R/at 407, Coorgahally village, Bewlavadi Post, Mysuru Taluk and District.

(By Sri. D.P.,- Adv.,)

V/S.

Defendants :- 1. Sri. Channappa S/o late Bommaiah, Aged about 55 years,
2. Smt. Lakshamma W/o Channappa, aged about 48 years,
Both R/at Arcot Road, Ganjam, Srirangapatna Taluk, Mandya District.

(By Sri. B.S.A., Adv.,)

Date of Institution of the Suit : 26.04.2013

Nature of the Suit : Suit for partition and separate possession
Date of Recording of Evidence : 09.06.2014
Date of Closing of Evidence : 09.06.2014
Date of Judgment : 14.07.2015
Total Duration : Day/s Month/s Year/s
18 03 02

(S.M.CHOUGALE)
Addl. Civil Judge & JMFC,
Srirangapatna.

: J U D G M E N T :

The plaintiffs filed the suit against the defendants to pass a judgment and decree, in their favour for partition and separate possession and legitimate share over the suit schedule properties and for metes and bounds and handover the physical possession of the same with costs.

2. The brief fact of the plaintiff's case is as follows;

It is submitted that, the deceased Sri. Basavegowda and Smt. Parvathamma are husband and wife had begotten five children i.e., Poornima, Lakshmi, Nagamani, Sarala and Shruthi @ Suvarna respectively from that lawful wedlock. The Basavegowda and Channappa are the brothers begotten by the deceased Bommaiah (Propositus) and Ningamma. The suit schedule properties are the ancestral and joint family properties are in joint possession and enjoying peacefully by the plaintiffs and defendants. During the lifetime of the said

Sri.Late.Bommaiah was being the head of the family looking after the entire affairs of the above stated joint family and he bequeathed his self-acquired properties in the name and favour of late Basavegowda and Channappa respectively under the registered Will dated 08.06.1984 which is not in dispute. After his death, the remaining properties in the name and favour of Bommaiah the joint family properties was mutated the khatha of schedule properties in the name and favour of Ningamma. Now the said Ningamma is no more. After the death of Bommaiah, late Basavegowda was being the head of the family looking after the entire affairs of the above stated joint family and are eaking of their livelihood from the suit schedule properties which are the ancestral and joint family properties are in joint possession and enjoying peacefully. After the death of the above said Sri. Basavegowda the Channappa (1st defendant) was looking after the affairs of the joint family.

It is further submitted that, the suit schedule properties are the ancestral and joint family properties of the plaintiffs and defendants. All are living in joint family and they have not at all divided the suit schedule properties and are in joint possession and enjoyment of the suit schedule properties. Plaintiffs and defendants have been constituted the members of the undivided joint Hindu family.

It is further submitted that, the item No.s 1 and 2 suit schedule properties are the ancestral and joint family properties of plaintiffs and defendants, as these properties is in the name and favour of Ningamma which khatha was transferred in her name which is not divided between the joint family members in which plaintiffs are having legitimate share. The 1st defendant being the head of the family was not properly supervising and maintaining the affairs of the family and the business and all are being in joint possession and enjoyment of the schedule properties for the betterment of plaintiffs. The 3rd item of the suit schedule property is the ancestral and joint family properties of plaintiffs and defendants, as this property is now in the name of defendant No.2 which khatha was transferred in her respective name behind back of plaintiffs which is not divided between the joint family members in which plaintiffs are having legitimate share. That the 4th item of the suit schedule property is the ancestral and joint family property of plaintiffs and defendants, as this property was in the name of Sri.late Bommaiah of which the defendant No.1 changed the khatha without knowledge of these plaintiffs to defraud the legitimate right of the plaintiffs. The 1st and 2nd defendants being the head of the family was not properly supervising and maintaining the affairs of the joint family and the business and being in joint possession and enjoyment of the

suit schedule properties for the betterment of plaintiffs and for the joint family.

It is further submitted that, the 1st defendant being the head of the joint family, managing and supervising the affairs of the schedule properties, but the defendants with the collusion each other, without the knowledge of plaintiffs and by suppressing the legitimate share or right of plaintiff over the item No.s 1 and 2 of suit schedule properties, are making hectic efforts to sell by suppressing the legitimate share of plaintiffs at the behind back of plaintiffs with an intention to defraud plaintiffs. Hence the same does not bind plaintiffs right in any manner whatsoever over the same. The plaintiffs came to know the alleged hectic efforts of alienation in the first week of April 2013.

It is further submitted that, the plaintiff No.s 1 to 3 had got issued the legal notice to the defendant No.1 through their counsel dated 28.09.2012 through R.P.A.D. which is duly served on him by demanding their legitimate share to the defendant No.1 and demanded to give their share in the suit schedule properties by effecting the partition. After the receipt of the above said notice, at first instance, the 1st defendant had given the untenable reply stating that there is Will executed by deceased Ningamma in favour of defendant. But these properties are not the self-acquired

properties of the deceased Ningamma and she has got not any right to execute a Will in respect of the ancestral and joint family properties. There is no such Will but defendant has set up a new story to defraud the claim of the plaintiffs, if same was to be true defendant may acted upon and may not silent for all these years. Even otherwise, if any such Will is existed it does not bind upon these plaintiffs. The defendant denied to effect the partition in the suit schedule properties. Hence the 1st defendant denying to give the share of the plaintiffs in the suit schedule properties. After the receipt of the notice the plaintiff No.s 4 & 5 joined with other plaintiffs to file this suit.

It is further submitted that, in law, the plaintiffs and the defendants being in joint possession and enjoyment of the suit schedule properties and being the member of the joint Hindu family, plaintiffs are entitled to legitimate share in the suit schedule properties. Hence, this suit for partition and separate possession be metes and bounds of their legitimate share over the suit schedule properties.

It is further submitted that, the plaintiffs submits that in case any of the properties belongs to the joint family of the plaintiffs and defendants, the plaintiffs are entitled in the suit, the plaintiffs are at liberty to include the items at any stage of the suit. The cause of action for the suit arose when

the plaintiffs got issued the legal notice to the defendants through her counsel dated 28.09.2012 through R.P.A.D. by demanding their legitimate share by effecting partition and subsequently when the plaintiffs demand was refused by the defendant No.1 through reply notice dated 13.10.2012 by his advocate for partition and separate possession in the suit schedule properties by metes and bounds, and when the plaintiffs came to know the alleged hectic efforts of the sale of suit schedule properties, which are all comes within the jurisdiction of this Hon'ble Court. Hence this suit is filed.

3. After registering the case, the defendants neither appeared nor contested the suit.

4. The plaintiff No.1 has examined on behalf of her, and on behalf of others plaintiffs as P.W. 1, and got marked Ex.P.1 to Ex.P.6.

5. Heard the arguments.

6. The following points that arise for my consideration;

1. Whether the plaintiffs prove that, the suit schedule properties are the ancestral and joint family properties of the plaintiffs and defendants and they are in joint possession and enjoyment of the same?
2. Whether the plaintiffs are entitled for the reliefs as sought for?

3. What order or decree?

7. My findings to the above said points are as under;

Issue No.1 : In the affirmative.

Issue No.2 : In the affirmative.

Issue No.3 : As per final order,

for the following;

: R E A S O N S :

8. **Issue No. 1:-** It is worth observing that, the plaintiff no.1 filed her affidavit in chief examination by reproducing the plaint averments and got marked the three RTC.s with respect to suit schedule property as Ex.P.1 to 3, one demand register i.e., Tax register Ex.P.4, the legal notice as Ex.P.5 and reply notice as Ex.P.6.

9. The Basavegowda and Channappa are the brothers begotten by the deceased Bommaiah (propositus) and Ningamma. The plaintiffs Nos. 1 to 5 are daughters of Late Basavegowda and Parvathamma. During the life time of said Bommaiah was being the head of the family looking after the entire affairs of the joint family and he bequeathed his self acquired property in favour of Basavegowda and Channappa respectively under register will dated: 8.6.1984, which is not in dispute. After the death of Basavegowda the Channappa i.e., first defendant was looking after affairs of the joint family and changed the Khata into his name without knowledge of these plaintiffs to defraud the legitimate right

of the plaintiffs. When the defendants refused to give their legitimate share in the suit schedule properties the plaintiff caused legal notice to the 1st defendant as per Ex.P.4. After receipt of the above said notice the 1st defendant had given the untenable reply stating that, there is will executed by deceased Ningamma in favour of defendant as per Ex.P.6. On careful perusal of the plaintiff and oral and documentary evidence it is appropriate to consider that, the suit schedule properties are standing in the name of Late Ningamma, 1st and 2nd defendants, which reveals as per Ex.P.1 to 4. On the other hand, the defendant has replied to the legal notice issued by the plaintiff as per Ex.P.6 by contending that there is a will executed by deceased Ningamma in favour of defendant but, failed to produce and prove that the suit schedule properties are self acquired properties of deceased Ningamma. The general principle undoubtedly is that, a Hindu family is presumed to be joint unless contrary is proved. These suit schedule properties are the ancestral and joint family properties of plaintiffs and defendants. The plaintiff by putting oral and documentary cogent evidence has established that the suit schedule properties are the ancestral joint family properties of plaintiffs and defendants family. Therefore I answer point no. 1 in affirmative.

10. Issue No.2: The plaintiff has proved the ancestral and joint family property as per the oral and documentary

evidence per contra neither defendant appeared nor contested suit to disprove the plaintiffs case and the court can draw an adverse inference as to defendants have not entered into witness box. Therefore, the plaintiff is entitle for the relief of partition and separate possession. Hence I answer point no.2 in affirmative.

11. Issue No.3:- In the light of discussion made above, I proceed to pass the following:- 194/2013

ORDER

The suit filed by the plaintiffs No. 1 to 5 is hereby decreed.

The plaintiff No.s 1 to 5 entitled 1/2 and defendant No.s 1 and 2 entitled to 1/2th both in suit schedule property item No.s 1 to 4 and separate possession respectively.

In the circumstances both the parties bear their own costs.

Draw preliminary decree accordingly.

(Dictated to the Stenographer online computer, corrected by me and pronounced in open court on this the 14th day of July, 2015)

(S.M.CHOUGALE)
Addl. Civil Judge & JMFC,
Srirangapatna.

A N N E X U R E

List of witnesses examined for plaintiffs:

P.W.1 : B.Poornima

List of witnesses examined for defendants:

NIL

List of documents marked for plaintiffs :

Ex.P.1 : R.T.C. extract
Ex.P.2 : R.T.C. extract
Ex.P.3 : R.T.C. extract
Ex.P.4 : Income tax register
Ex.P.5 : Copy of legal notice
Ex.P.6 : Reply notice

List of documents marked for defendants:

NIL

Addl. Civil Judge & J.M.F.C,
Srirangapatna.

Judgment pronounced in Open Court
(Vide separate judgment)

ORDER

The suit filed by the plaintiffs No. 1 to 5 is hereby decreed.

The plaintiff No.s 1 to 5 entitled 1/2 and defendant No.s 1 and 2 entitled to 1/2th both in suit schedule property item No.s 1 to 4 and separate possession respectively.

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Draw preliminary decree accordingly.

Addl. Civil Judge & JMFC,
Srirangapatna.