

**Form No. 9
[Civil]**

Title Sheet for
judgement in
suits

**TITLE SHEET FOR JUDGEMENTS IN SUIT
IN THE COURT OF THE JUDGE, ADDL. SMALL CAUSES AND
SENIOR CIVIL JUDGE, MYSURU.**

PRESENT:

**Sri. Ravi @ Ravindra Devakareppa Ari, B.Com., LL.B.Spl.
Judge, Addl. Court of Small Causes, Mysuru,**

DATED THIS THE 29TH DAY OF JUNE 2016

O.S. No.127/2014

BETWEEN

- 1. Smt. Mangala @ Boramma,
W/o Jayakumar K., aged
about 26 years, resident of
Naganahalli Village,
Kasaba Hobli,
Srirangapatna Taluk,
Mandya District.**
- 2. Smt. Rekha, W/o K.
Siddegowda, aged about
24 years, resident of
Mellahalli Village, Varuna
Hobli, Harohalli Post,
Mysuru Taluk & District.**
- 3. Smt. Roopa, W/o Madesh,
aged about 21 years,
residing at No.201,
Bandipalya, Ganapathi
Sachidananda Ashrama
Post, Kasaba Hobli,
Mysuru.**

: PLAINTIFFS

(Represented by Sri. M. Lokesh, Advocate)

AND

1. **Smt. Chikkathayamma, W/o late Siddegowda, aged about 55 years.**
2. **Sri. Boregowda, S/o late Siddegowda, aged about 40 years.**

Both are residents of Bhogadi Village, Kasaba Hobli, Mysuru Taluk and District.

3. **Smt. Lakshmi, W/o Jayanna, aged about 38 years, Bolanahalli Village, Belakere Hobli, Hunsur Taluk and Mysuru District.**
4. **Smt. Shantha, W/o Devaraju, aged about 36 years, resident of Hootagalli, Mysuru Taluk & District.**
5. **Smt. Jayamma, W/o Shivalingu, Belara Village, Hullahalli Hobli, Debur Post, Nanjangud Taluk and Mysuru District.**
6. **Special Land Acquisition Officer, Mysuru Urban Development Authority (MUDA), Vinobha Road, Mysuru.**

: DEFENDANTS

**(Defendants No.1, 3 and 4 are placed exparte
Defendant No.2 is represented by Sri. M.C. Dileep Kumar, Advocate
Defendant No.5 is represented by Sri. Narayana Swamy, Advocate
Defendant No.6 is represented by Sri. C.N.Mahesh, Advocate)**

Date of institution of the suit	22.12.2009
Nature of the suit (suit on pronote, suit for declaration and possession suit for injunction, etc.,)	SUIT FOR PARTITION AND SEPARATE POSSESSION
Date of the commencement of recording of the evidence	03.09.2015

Date on which judgement was pronounced	29.06.2016		
Total Duration	Years 06	Months 06	Days 07

**(Ravi @ Ravindra Devakareppa Ari)
Addl. Judge, Court of Small Causes,
Mysuru.**

: J U D G M E N T :

The present suit is filed by the Plaintiffs against the Defendants for the relief of Partition and particularly, Plaintiffs claiming 1/8th share each in the suit schedule properties.

2. The case of the Plaintiffs, in brief, is as under:

It is submitted that one late Sri. Sidde Gowda, son of late Linge Gowda @ Kunta Linge Gowda, who was died on 11.09.2006 is father of the Plaintiff and further submitted that Plaintiff No.1 to 3 were born to the late Sidde Gowda with wed-lock of one Smt. Deveramma, who was 2nd wife of late Sidde Gowda.

It is further contended that the 1st Defendant was the 1st wife of the late Sidde Gowda and Defendant No.2 is the son and Defendant No.3 to 5 are the daughters of late Sidde Gowda, who were born out of wed-lock with 1st Defendant.

It is further submitted that the suit schedule properties are the ancestral properties of the Plaintiffs and all the Defendants. The Plaintiffs and the Defendants were enjoying the suit schedule properties as ancestral Joint Family Property together all these days.

It is further submitted that properties bearing Sy.No.61/2, 61/3, 86/1 and 86/2 situated at Basavanahalli Village, Kasaba Hobli and Sy.No.38/7, 38/8 situated at Bhogadi Village, Kasaba Hobli, Mysuru and Sy.No.8/2 and 10 situated at Kaduvaddaragudi Village, Belakere Hobli, Hunsur Taluk, Mysuru District and one house property and one open site are situated at Bhogadi Village, Mysuru Taluk are the subject matter of the present suit.

It is further submitted that the suit schedule properties are the ancestral properties of the Plaintiffs and Defendants No.1 to 5. But Defendants 1 to 5 have planned to alienate the suit schedule property and thereby cause of action arose to file the present suit. Accordingly, the Plaintiffs prayed to decree the suit.

It is further submitted that the properties A to D were acquired by MUDA during the year 2003-04 and 2004-05 for the purpose of formation of MUDA sites. But, the Plaintiffs never got any compensation amount nor received any sites and totally Defendants No.1 to 5 are trying to deprive the Plaintiffs share over the suit schedule properties.

3. In pursuance of the suit summons, Defendants No.2, 3, 5 and 6 appeared through their respective counsels and Defendant No.3 filed Written Statement and other Defendants have not filed any Written Statement. But Defendants No.1 and 4 were placed *exparte*.

4. The brief contentions of the Defendant No.3 in his Written Statement are as follows:-

At the outset, this Defendant denied all the allegations made out in the petition and also denied the share of the Plaintiff and further submitted that there is no cause of action for filing the present suit.

It is further submitted that the Plaintiffs have not approached the Defendants and 1st Defendant also promised all the Plaintiffs and Defendants to settle the matter amicably within a short period of time. But, the Plaintiffs have not come forward for amicable settlement and intentionally filed this unnecessary suit.

It is further contended that this Defendant is also entitled for the equal shares in the suit schedule properties and 5th Defendant is also ready to pay the Court Fee for their respective shares. Accordingly, he prayed to dismiss the suit amongst other grounds urged in their Written Statement.

5. On the basis of the pleadings of the respective parties, my Learned Predecessor-in-Title has framed the following issues:

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1. Whether the Plaintiffs prove that the suit properties are ancestral Property of Plaintiffs and Defendants?
2. Whether the Plaintiffs prove that they never received any compensation amount or any sites in lieu of compensation towards acquisition of the suit property?
3. Whether the Plaintiffs are entitled for 1/8th share over the suit property?
4. Whether the 5th Defendant is entitled for any share over the suit property?
5. What Relief or Decree?

6. In order to substantiate the case of the Plaintiffs, the 1st Plaintiff was appeared before this Tribunal and examined as P.W.1 and got marked Exs.P.1 to P.20. Further, it is relevant to note that the Defendants have not led any evidence and even not come forward to Cross-examine the P.W.1 and thereby the Cross-examination of P.W.1 is taken as nil.

7. Further it is relevant to note that both the parties to the suit were not come forward to advance their arguments, though sufficient opportunities given to them and thereby arguments on behalf of respective parties taken as nil.

8. On perusal of the materials available on record, the following are my answers to the above said Issues:

Issue No.1:	In Affirmative
Issue No.2:	In Affirmative
Issue No.3:	In Affirmative
Issue No.4:	In Affirmative
Issue No.5:	As per final Order for the following reasons.

REASONS

9. **ISSUES NO.1 to 4:** - These four Issues are taken together for discussion, to avoid repetition of facts and they are inter-linked with each other.

10. As stated above, it is the definite case of the Plaintiffs is that one late Sri. Sidde Gowda, son of late Linge Gowda @ Kunta Linge Gowda, who was died on 11.09.2006 is father of the Plaintiff and further submitted that PlaintiffNo.1 to 3 were born to the late Sidde Gowda with wed-lock of one Smt. Deveramma, who was 2nd wife of late Sidde Gowda.

11. It is further contended that the 1st Defendant was the 1st wife of the late Sidde Gowda and Defendant No.2 is the son and Defendant No.3 to 5 are the daughters of late Sidde Gowda, who were born out of wed-lock with 1st Defendant.

12. It is further submitted that the suit schedule properties are the ancestral properties of the Plaintiffs and all the Defendants. The Plaintiffs and the Defendants were enjoying the

suit schedule properties as ancestral Joint Family Property together all these days.

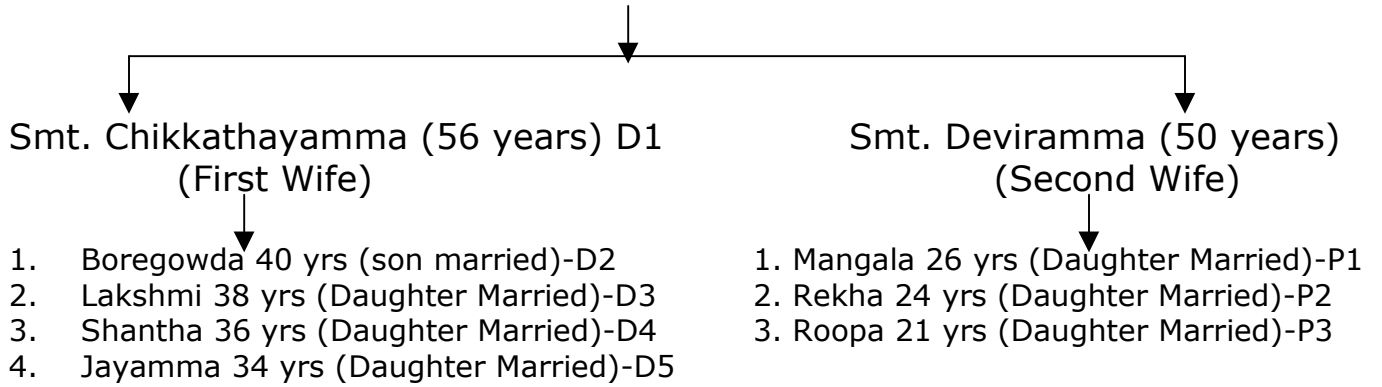
13. It is further submitted that properties bearing Sy.No.61/2, 61/3, 86/1 and 86/2 situated at Basavanahalli Village, Kasaba Hobli and Sy.No.38/7, 38/8 situated at Bhogadi Village, Kasaba Hobli, Mysuru and Sy.No.8/2 and 10 situated at Kaduvaddaragudi Village, Belakere Hobli, Hunsur Taluk, Mysuru District and one house property and one open site are situated at Bhogadi Village, Mysuru Taluk are the subject matter of the present suit.

14. It is further submitted that the suit schedule properties are the ancestral properties of the Plaintiffs and Defendants No.1 to 5. But Defendants 1 to 5 have planned to alienate the suit schedule property and thereby cause of action arose to file the present suit. Accordingly, the Plaintiffs prayed to decree the suit.

15. It is further submitted that the properties A to D were acquired by MUDA during the year 2003-04 and 2004-05 for the purpose of formation of MUDA sites. But, the Plaintiffs never got any compensation amount nor received any sites and totally Defendants No.1 to 5 are trying to deprive the Plaintiffs share over the suit schedule properties.

16. In order to better appreciation of the relationship between the parties. It is just and necessary to note about the following Genealogical Tree is furnished by the Plaintiffs.

Late Siddegowda, S/o late Linge Gowda @ Kunta Linge Gowda (dead)



17. In the light of the above said Genealogical Tree, the Plaintiffs are described the relationship between them with the Defendants and further stated that suit schedule properties are Ancestral Joint Family Properties of the Plaintiffs and Defendants and contended that the Plaintiffs have shares over the suit schedule properties.

18. In order to prove the case of the Plaintiffs, the Plaintiff No.1 appeared before this Court and examined as P.W.1 and she has filed her Affidavit in lieu of her Examination-in-Chief, wherein she has reiterated the averments of the Plaint, apart from placing various documents, which were marked as Ex.P.1 to P.20.

19. At the outset, Ex.P.1 is the Genealogical Tree submitted by the Plaintiff and on careful perusal of the said Genealogical Tree, it discloses that the Plaintiffs are children of late Sidde Gowda and they were born to the 2nd wife of said Sidde Gowda by name Deviramma. Similarly, it reveals that the Defendant No.1 is the 1st wife of the late Sidde Gowda and Defendants No.2 to 5 are the children of the late Sidde Gowda.

20. In the case on hand, the Defendant No.5 who protest the present suit not set up any specific defence and indirectly admitted the status of the Plaintiffs with late Sidde Gowda. Apart from that, the Defendants have not come forward to Cross-examine the P.W.1 and thereby the evidence of P.W.1 remains unchallenged.

21. In the light of the above said unchallenged testimony of the P.W.1 coupled with the Ex.P.1/Genealogical Tree and coupled with the contention taken by 5th Defendant, it can be easily inferred that the Plaintiffs are born to the Sidde Gowda out of wed-lock with 2nd wife of late Sidde Gowda. Similarly, it can be easily inferred that Defendant No.1 is the 1st wife of late Sidde Gowda and remaining Defendants No.2 to 5 are his children.

22. In the light of the geology submitted by the plaintiff and looking to the unchallenged testimony of the PW1, it can be easily conclude that the Plaintiffs are also legal heirs of the late Sidde Gowda.

23. In the case on hand, the Plaintiffs got produced the various RTC extracts pertaining to the suit schedule properties and on careful perusal of the Ex.P.3, it reveals that Schedule 'A' to 'D' properties were appears to be acquired by the MUDA and the same can be seen from the Ex.P.3to P.8. Further, Plaintiffs got produced the property extract pertaining to the Schedule 'E' to 'H' property as per Ex.P.9, 10 and 11 and on careful perusal of said property extract, it reveals that the said property bearing

Sy.No.387/8, 37/7, 8/2 and 10 respectively are standing in the name of the father of the Plaintiff by name Sidde Gowda, son of Linge Gowda.

24. Further, the Plaintiffs got produced the Sale Deed as per Ex.P.12 and P.15 and on careful perusal of the Ex.P.12 and 15, it reveals that the father of the Plaintiffs got purchased the property bearing Sy.No.8 and also property bearing Sy.No.10 during the year 1992-93 and by virtue of said sale deeds the said properties are acquired by the late Sidde Gowda. On careful perusal of all these documentary evidence, it can be easily conclude that the said properties were ancestral properties of the Plaintiffs and Defendants. Anyhow, some of the properties were acquired by the father of the Plaintiffs, which are also liable for partition amongst the Plaintiffs and Defendant NO.1 to 5 for the simple reason that the father of the Plaintiffs died intestate. Therefore, all the properties which were left by the late Sidde Gowda are liable to be divided amongst the parties to the suit.

25. As per the averments of the Plaint, the suit 'A' to 'D' properties were acquired by the MUDA during the year 2003-04 and also 2004-05 and pursuant to that in the present suit, the Plaintiffs have filed interim application restraining the Defendant No.6 from not disbursing any amount to the Defendants No.1 to 5 and the same was allowed and restrained the Defendant No.6 from disbursing the said amount.

26. Further it is very pertaining to note that at the instance of the Plaintiffs during the pendency of the present suit; the said MUDA Authority was impleaded as Defendant No.6. However also, the Defendant No.6 not filed any Written Statement, though it appeared through its counsel. Further, absolutely there are no particulars about the acquisition of the land and amount of compensation to be given by the Defendant No.6 to other Defendants. However also as per the RTC extract, the suit 'A' to 'D' schedule properties were acquired by the MUDA Authority. In the absence of particulars about the amount of compensation, it is very difficult to conclude that how much amount is going to be granted by the MUDA Authority as compensation to the parties.

27. Anyhow, in the event of granting the compensation, in respect of the Suit 'A' to 'D' Schedule Property, then Plaintiffs are also entitled for the share in the said amount.

28. In the case on hand, the father of the Plaintiffs died on 11.09.2006 and in that regard, the Plaintiffs have produced the Death Certificate of their father as per Ex.P.2.

29. In the light of the above said Ex.P.2, it appears to the Court that the father of the Plaintiff died during the year 2006.

30. As discussed herein before there is no dispute about the genealogy furnished by the Plaintiffs and moreover, the Defendants have not protested the suit and not come forward to Cross-examine the P.W.1. Under such circumstances, it can be

easily inferred that the Plaintiffs are children of the 2nd wife of late Sidde Gowda.

31. No doubt, the said Sidde Gowda appears to be married one Deviramma during the substance of the marriage with the Defendant No.1. But, there is no denial with regard to the genealogy and thereby the 2nd wife of the late Sidde Gowda is not entitled for any share in the suit schedule properties. But, the Plaintiffs being a illegitimate children of late Sidde Gowda are equally entitled to the shares in the suit schedule properties and Defendant No.1, who is wife of the late Sidde Gowda also entitled for the share and remaining Defendants No.2 to 5 are also entitled for the shares. Therefore, all the suit schedule properties are equally liable to be divided into 08 shares and the Plaintiffs No.1 to 3 and Defendants No.1 to 5 each are entitled for 1/8th shares over the suit schedule properties.

32. But, as discussed herein before, no materials produced before this Court with regard to how much amount to be granted by the MUDA Authority for acquisition of the suit 'A' to 'D' properties. Therefore, if any amount going to be granted by the Defendant No.6, then the said amount is also equally entitled by the Plaintiffs and Defendants No 1 to 5.

33. For the above said reasons and discussions, it can be easily conclude that the Plaintiffs are being illegitimate children of late Sidde Gowda, are entitled to the equal shares in the suit

schedule properties along with Defendants No.1 to 5. Hence **I answer these Issues No.1 to 4 in the Affirmative.**

34. **ISSUE NO.5**: -In view of the above said findings, I proceed to pass the following Order: -

: O R D E R :

The suit of the Plaintiffs is hereby decreed.

Consequently, the suit schedule properties "A" to "J" are equally divided into 08 shares.

Accordingly, the Plaintiffs No.1 to 3 and Defendants No.1 to 5 each are entitled for 1/8th shares over the suit schedule properties.

Similarly, if the Defendant No.6 is going to be granted any compensation in lieu of acquisition of the Plaint "A" to "D" Schedule properties, then also, Plaintiffs No.1 to 3 and Defendants No.1 to 5 are equally entitled to the said compensation amount.

Draw Preliminary Decree accordingly.

(Dictated to the Stenographer, typed by her, corrected by me and then pronounced in the Open Court on **29th day of June 2016**).

(Ravi @ Ravindra Devakareppa Ari)
Addl. Judge, Court of Small Causes,
Mysuru.

: ANNEXURE :

List of witnesses examined on behalf of the Plaintiff:

P.W.1 Smt. Mangala

List of documents marked on behalf of the Plaintiff:

Ex.P.1: Genealogical Tree
Ex.P.2: Death Certificate
Ex.P.3 & 4: True extracts of RTC
Ex.P.5: True extracts of Mutation Register
Ex.P.6 & 7: True extracts of RTC
Ex.P.8: True extracts of Mutation Register
Ex.P.9 to 11: True extracts of RTC
Ex.P.12: Sale Deed dated 30.09.1992
Ex.P.13 & 14: True extracts of Mutation Register
Ex.P.15: Sale Deed dated 10.02.1993
Ex.P.16: True extract of Mutation Register
Ex.P.17: Tax Paid Receipt
Ex.P.18: True extract of Demand Register
Ex.P.19: Tax Paid Receipt
Ex.P.20: True extract of Demand Register

List of witnesses examined on behalf of the Defendants:

NIL

List of documents marked on behalf of the Defendants:

NIL

**(Ravi @ Ravindra Devakareppa Ari)
Addl. Judge, Court of Small Causes,
Mysuru.**