

**IN THE COURT OF THE SENIOR CIVIL JUDGE AND J.M.F.C.,
H.D.KOTE**

Present: NATARAJ YADAV .S, M.B.A., LL.B.,
Senior Civil Judge & J.M.F.C.,
H.D.Kote

Dated, this the 1st day of July, 2022

O.S.NO. 32/2022

Plaintiff/s : Basappa
S/o Late. Bogappa,
Aged about 70 years,
R/at Chikkabaragi Village,
Saraguru Hobli, Saraguru Taluk
(By Sh.K.S.Mohan., Advocate)

-V/s-

Defendant/s: Gurumallappa
S/o Late. Bogappa,
Aged about 75 years,
R/at Bedarahalli Village,
Kandalike Hobli,
Saraguru Taluk, Mysuru District.
(Exparte)

Date of institution of the Suit	:	22.02.2022
Nature of the Suit	:	Partition and separate possession
Date of commencement of recording of evidence	:	24.06.2022
Date on which the Judgment was pronounced	:	01.07.2022
Total duration	:	Years /s Month/s Day/s 00 04 09

(NATARAJ YADAV .S)
Senior Civil Judge & J.M.F.C
H.D.Kote

J U D G M E N T

The present suit is filed by the plaintiff against the defendant for the relief of partition and separate possession of plaintiff 1/2 legitimate share in the properties bearing Sy.No.56/2, Sy.No.55/2, Sy.No.22 and Sy.No.1 situated at Bidarahalli Village and Nanjanathapura village, Saraguru Taluk, Mysuru (herein after referred to as suit properties).

2. The case of the plaintiff has set out in the plaintiff is that Sh.Bogappa and Ms.Gidamma died leaving behind Sh.Basappa, the plaintiff and Sh.Gurumallappa the (defendant) as their legal heirs. The plaintiff further stated that the item no.1 and 4 suit schedule properties were inherited by Sh.Bogappa from his father and in the same way item no.3 of the suit property was inherited by Sh.Bogappa from his mother. Item no.2 of the suit property was the self acquired property of Ms.Gidamma and after their death, he along with defendant have inherited the said properties and are in possession and enjoyment of the same jointly. He has further stated that when he asked the defendant to effect for partition, the defendant postpone the same on one or other pretext and therefore several panchayaths were held in this regard, but the defendant failed to yield to the advice of the panchaythdars and failed to effect partition of suit schedule properties and making an hectic attempts to alienate the suit schedule properties to harm the interest of the plaintiff and hence, plaintiff has come up with the suit.

3. After institution of the suit, as contemplated under law the suit summons came to be issued to the defendant. In spite of service of summons the defendant has not appeared before the court and hence he was placed *exparte*.

4. Heard the arguments.

5. The following points that would arise for my consideration:

1. Whether the plaintiff is entitled to the relief sought for?
2. What order or decree?

6. The plaintiff in order to establish his case, the plaintiff got examined herself as P.W.1 and got marked the documents as per Ex.P.1 to Ex.P.10 and closed his side evidence.

7. My answers to the above points are as follows;

- Point No.1** :- **In the Affirmative**
Point No.2 :- **As per final order for the following**

REASONS

Point No.1:-

8. It is the specific case of the plaintiff that he is the son of late Sh.Bo-gappa and Ms.Gidamma and defendant is also the legal heir of said Sh.Bogappa and Ms.Gidamma who had two children and he is the second of said Sh.Bogappa and Ms.Gidamma.

9. According to the plaintiff, the item no.1, 3 and 4 suit schedule properties were the self acquired properties of his Grandparents and the same inherited by his father after their demise by operation of law and item no.2 of suit schedule properties was the self acquired property of his mother Late Gidamma. The plaintiff has produced the RTC extract of suit schedule properties bearing Sy.No.56/2, Sy.No.55/2, Sy.No.22 and Sy.No.1 and copy of the mutation certificate in M.R.No.2/1997-1998

dated 22.2.1997 which clearly goes to show that his father Sh.Bogappa was the kathedar of item no.3 and 4 of the suit schedule properties and it was transferred in the name of the Sh.Bogappa on the basis of inheritance. It further goes to show that his grandmother Ms.Veramma and mother Ms.Gidamma were the kathedar of item no.1 and 2 of the suit schedule properties being ancestral one.

10. The plaintiff has specifically contended that his parents died intestate and ever since from the date of their death, there was no partition and despite of demand on various occasions, the defendant went on postponing the said partition and at last on August 2021, he demanded for partition by convening a meeting of elders and well wishers and in the said panchayath, defendant has failed to yield to the advice made by the said panchayath and as such, the said panchayath failed. Thereafter, he has come up with the present suit seeking for relief of partition and separate possession of her 1/2 share over the suit schedule properties. The defendant remained exparte. The evidence of the plaintiff who is examined as P.W.1 also remained unchallenged and even the documents produced and marked by the plaintiff are also not disputed.

11. Ex.P.3, Ex.P4 and Ex.P.6 clearly shows that the item no.3 and 4 of the suit schedule properties were the ancestral and joint family properties inherited by late Sh.Bogappa from his father who died in intestate and in the same way Ex.P.1 and Ex.P.2 clearly shows that the item no.1 and 2 of the suit schedule properties were the self acquired properties of late Ms.Veramma and late Ms.Gidamma and since there is no defense by the defendant setting up any testamentary succession, this court is of the opinion that the plaintiff has made out a case for grant of her 1/2 share as

he has succeeded as a class I heir under section 8 and 14 of the Hindu Succession Act. Accordingly, I answer this point in the Affirmative holding that the plaintiff jointly succeeded to the estate of deceased Sh.Bogappa and Ms.Gidamma along with defendant and he is entitled for partition and separate possession of his legitimate 1/2 share in the suit schedule properties which is amenable for partition.

point No.2:-

12. In view of the discussion and the reasons stated above and my answer to the above point in Affirmative, I proceed to pass the following.

ORDER

The suit of the plaintiff is hereby decreed with costs.

It is hereby declared that the plaintiff is entitled for partition and separate possession of his 1/2 share in the suit schedule properties by metes and bounds.

Draw preliminary decree accordingly.

(Dictated to the Stenographer on computer, typed by him, revised, corrected and then pronounced by me in the open Court on this the 1st day of July, 2022.)

(NATARAJ YADAV .S)
Senior Civil Judge & J.M.F.C
H.D.Kote

ANNEXURE

List of witnesses examined by the plaintiff/s:

PW.1 : Sh. Basappa

List of witnesses examined by the defendant/s:

Nil

List of documents marked by the plaintiff/s:

- Ex.P1 to P4 & 8 to 9 : RTC extracts
Ex.P5 : Encumbrance certificate
Ex.P6 : M.R. extracts
Ex.P7 : Death certificate of Giddamma

List of documents marked by the defendant/s:

Nil

(NATARAJ YADAV .S)
Senior Civil Judge & J.M.F.C
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