

**IN THE COURT OF THE CIVIL JUDGE AND J.M.F.C, AT
HUNSUR.**

:-Present:-

Sri. Girish Chatni, B.A., LL.B(Spl).
Civil Judge & J.M.F.C,
Hunsur.

O.S.No.359/2012

Dated this the 6th day of **December, 2017**

PLAINTIFF:

: Smt. Sundaramma,
W/o Shivegowda,
Aged about 43 years,
R/at Rangaiahna Koppalu
Village, Bilikere Hobli,
Hunsur Taluk.

(Sri.C.S.S., Advocate)

// Versus //

DEFENDANTS :

- 1) Ravi,
S/o Tagadooregowda,
Aged about 32 years,
- 2) Santoshkumar,
S/o Thagadoregowda,
Aged about 30 years,
Both are R/at Yelawala Village
& P.O., Mysore Taluk.
- 3) Smt.Boramma,
W/o Late Puttaswamygowda,
Aged about 45 years,
- 4) Smt.Kamamma,
W/o Puttaswamygowda,
Aged about 40 years,
- 5) Smt.Manjula,
D/o Puttaswamygowda,
Aged about 27 years,
W/o Mahadevakumar.

3 to 5 R/at Manuganahalli Village,
Bilikere Hobli, Hunsur Taluk.

- 6) Kalegowda,
S/o Late Sannamarigowda,
Aged about 50 years,
R/at Hussainpura Village,
Bilikere Hobli, Hunsur Taluk.
- 7) Rajegowda,
S/o Sannamarigowda,
Aged about 48 years,
R/at Manuganahalli Village,
Bilikere Hobli, Hunsur Taluk.
- 8) Smt.Siddamma
W/o Late Sannamarigowda- dead

(D1 & 2 by Sri.A.K.N, Advocate)
(D3 to 5 by Sri.R.K, Advocate)
(D4, 6 to 8 - Exparte)

Date of institution of suit : 11.10.2012

Nature of the suit : Partition and Separate Possession

Date of commencement of recording evidence : 20.03.2017

Date of judgment pronounced : 06.12.2017

Total duration : **05** years **01** months **25** days.

Civil Judge & J.M.F.C,
Hunsur.

: J U D G M E N T :

This suit is filed by the plaintiff against the defendants for the relief of Partition and Separate Possession of her 1/6th share in the suit schedule properties by metes and bounds and in case of refusal order for the same through court agency and for costs of the suit and such other reliefs.

2. The subject matter of the suit are as follows;

- 1) Lands bearing Sy.No.22/1 measuring 3.00 guntas, Sy.No.23 measuring 1 acre, Sy.No.62/1 measuring 1 acre, Sy.No.62/10 measuring 1 acre all the properties situated at Manuganahalli Village, Bilikere Hobli, Hunsur Taluk.
- 2) Land bearing Sy.No.246/1 measuring 1 acre 7 guntas situated at Hussainpuranala Village, Bilikere Hobli, Hunsur Taluk, Mysore Dist.
- 3) House and Site property measuring 40 feet North-South and 80 feet East-West situated at Manuganahalli Village, Bilikere Hobli, Hunsur Taluk bearing Panchayath Khata No.166/21, 167/22, 21(A), 21(B), 21(C), 22(A), 22(B) and 22(C).

(Here in after referred to as "Suit properties" for short)

3. The factual matrix as set out in plaint, are as under:

It is the case of the plaintiff that, one Sri.Late Sannamarigowda resident of Manuganahalli Village, passed away about 18 years back leaving behind his wife Smt.Siddamma, a

pre-deceased daughter Smt.Savithramma, three sons by name Puttaswamygowda, Kalegowda and Rajegowda as well as a daughter Smt.Sundramma i.e., the plaintiff. Smt.Savithramma, pre-deceased her father Sannamarigowda, leaving behind her two sons by name Ravi and Santhoshkumar who are defendant Nos.1 & 2. Puttaswamygowda the eldest son passed away about one year back he had two wives who are defendant Nos.3 and 4. The defendant No.5 is the only daughter of late Puttaswamygowda through his first wife Smt.Boramma. Defendant No.6 has migrated to Hussainapura village and has settled there. The defendant Nos.7 & 8 are the son and wife of late Sannamarigowda, who are residing at Manuganahalli village. It is further contended that the properties described in the suit schedule are the ancestral and joint family properties of late Sannamarigowda. The plaintiff and defendants are the joint owners of the said properties. Late Sannamarigowda died intestate, leaving behind the plaintiff and the defendants to succeed to his estate. It is further contended that the plaintiff and defendants are entitled for definite share in the suit schedule properties and there has been no partition amongst the joint family members till date. It is further contended that the plaintiff demanded the defendants to effect partition the suit schedule properties and put her in the possession and enjoyment of her share, but the defendants have not obliged her request and inspite of repeated requests and demands, the plaintiff without any alternative has filed the present suit.

4. In response to the suit summons, the defendant Nos.1 & 2 and 3 & 5 have appeared through their respective counsels. In spite of service of summons, the defendant No.4, 6, 7 and 8 have not appeared before the court. Hence, they were placed ex parte. The defendant No.2 has filed his written statement. During the course of the trial the defendant No.8 reported to be dead, as her LRs were already on record, the plaint got amended.

4(a). The defendant No.2 has admitted the averments made in para No.2 & 3 of the plaint and has contended that he is also entitled for 1/6th share along with the plaintiff and defendant No.1 i.e., 1/6th share in the suit schedule properties. Therefore, the defendant No.2 has prayed to decree the suit of the plaintiff allotting 1/6th share in favour of defendant Nos.1 & 2 along with the costs of the suit.

5. On rival contentions of the parties and on perusal of materials placed on record the following issues have been framed by my predecessor in office.

ISSUES

1. Whether the plaintiff proves that the suit schedule properties are available for partition and she entitled to 1/6th share in the suit schedule properties?
2. Whether the plaintiff is entitled to 1/6th share in the suit schedule properties?
3. What Order or Decree?

6. The plaintiff in support of her case, got examined herself as PW.1 and got marked 9 documents as per Ex.P-1 to Ex.P-9 and closed her side. On the other hand defendants have neither examined nor marked any documents.

7. Thereafter, I have heard the arguments of both parties and perused the materials available on record.

8. My findings to the above issues are as under.

Issue No.1	:	In the affirmative
Issue No.2	:	Partly in Affirmative
Issue No.3	:	As per final order for the following.

REASONS

9. **ISSUE NO.1**: -

It is the case of the plaintiff that one Sri.Late Sannamarigowda resident of Manuganahalli Village, passed away about 18 years back leaving behind his wife Smt.Siddamma, a pre-deceased daughter Smt.Savithramma, three sons by name Puttaswamygowda, Kalegowda and Rajegowda as well as a daughter Smt.Sundramma i.e., the plaintiff. Smt.Savithramma, pre-deceased her father Sannamarigowda, leaving behind her two sons by name Ravi and Santhoshkumar who are defendant Nos.1 & 2. Puttaswamygowda the eldest son passed away about one year back he had two wives who are defendant Nos.3 and 4. The defendant No.5 is the only daughter of late Puttaswamygowda through his first wife Smt.Boramma.

Defendant No.6 has migrated to Hussainapura village and has settled there. The defendant Nos.7 & 8 are the son and wife of late Sannamarigowda, who are residing at Manuganahalli village. It is further contended that the properties described in the suit schedule are the ancestral and joint family properties of late Sannamarigowda. The plaintiff and defendants are the joint owners of the said properties. Late Sannamarigowda died intestate, leaving behind the plaintiff and the defendants to succeed to his estate. It is further contended that the plaintiff and defendants are entitled for definite share in the suit schedule properties and there has been no partition amongst the joint family members till date. It is further contended that the plaintiff demanded the defendants to effect partition the suit schedule properties and put her in the possession and enjoyment of her share, but the defendants have not obliged her request and inspite of repeated requests and demands, the plaintiff without any alternative has filed the present suit. Therefore, at the first instance the plaintiffs have to prove that the suit properties are the ancestral and joint family properties of the plaintiffs and defendant. At the same time, the defendant has to prove that the suit of the plaintiff is hit by prior partition.

10. The plaintiffs in order to establish the alleged facts have produced documents as per Ex.P-1 to Ex.P-9. Ex.P-1 is G.Tree, Ex.P-2 to 6 are RTCs, Ex.P-7 to Ex.P-9 are demand register extracts.

11. The plaintiff besides producing above referred documents, the plaintiff has examined herself as PW.1 and who in her affidavit filed in lieu of oral evidence, has deposed to the facts alleged in the plaint. The evidence so let in by the plaintiff is clearly supported by the documentary evidence, referred supra. It is pertinent to mention that, the plaint allegations and evidence, both by way of affidavit and documentary evidence remained uncontroverted and unchallenged. Moreover, the relationship as averred by the plaintiff and the contention raised as to suit properties are the ancestral and joint family properties has not been disputed by the defendants. From the documents placed on record by plaintiff, clearly drives me to the conclusion that the plaintiff and defendants are the members of Hindu undivided joint family and suit properties are the ancestral and joint family properties and are in joint possession of plaintiff and defendants. Therefore, in the absence to the challenge, to the oral and documentary evidence, I do not find any reason to disbelieve the same. In view of the discussions made above, I answer issue No.1 in the **Affirmative**.

12. **ISSUE NO.2:** Now that it is proved that that the suit properties are the ancestral and joint family properties of the plaintiff and defendants, the plaintiff is certainly entitled for her legal share over the same. On perusal of the documents produced and exhibited by the plaintiff, the extent shown to the schedule of the plaint with respect to the land bearing Sy.No.22/1 measuring 3 guntas and land bearing Sy.No.23 measuring 1 acre in comparison with Ex.P-2 and P-3, there is a totally change in the

extent as shown in the item No.1 of the suit schedule property. During the course of arguments the learned counsel for the plaintiff submitted that order may kindly be passed as far as the extent shown in the Ex.P2 and P3. On perusal of the entire averments made in the plaint, late Sannamarigowda i.e., father of the plaintiff has passed away about 18 years back i.e., before the amendment made to the Hindu Succession Act in the year 2005 and relying on the decision reported in Prakash and others Vs.Phulavathi and others, the plaintiff is entitled for notional share in the suit schedule properties. In view of the discussions made above the plaintiff is entitled for $1/20^{\text{th}}$ share in the suit schedule properties. The defendant No.2 has admitted the averments made in para No.2 & 3 of the plaint and has contended that they are also entitled for $1/6^{\text{th}}$ share along with the plaintiff and defendant No.1 i.e., $1/6^{\text{th}}$ share in the suit schedule properties. Therefore, the defendant No.2 has prayed to decree the suit of the plaintiff allotting $1/6^{\text{th}}$ share in favour of defendant Nos.1 & 2 along with the costs of the suit. Therefore, the defendant Nos.1 & 2 are entitled for their share in the share of their mother i.e., $1/40^{\text{th}}$ share each in the suit schedule properties. The defendant No.3, being the legally wedded wife and defendant No.4 being the second wife of the deceased Puttaswamygowda and defendant No.5 being the only daughter of late Puttaswamygowda, are entitled for their share in the share of the said Late Puttaswamygowda. Defendant No.3 and 4 together are entitled for $3/10^{\text{th}}$ share and defendant No.5 is entitled for $3/10^{\text{th}}$ in the suit schedule properties. Defendant Nos.6 & 7 being the sons of late Sannamarigowda are entitled for

6/20th share each in the suit schedule properties. As already discussed above as there is a variations in the extent to the item No.1 of the suit schedule properties, certainly with respect to the item No.1 of the suit schedule properties, the plaintiff is entitled for 1/20th share to the extent as shown in the Ex.P2 and P3. In view of the discussions made above, the plaintiff is entitled for 1/20th share in the following properties.

- 1) Land bearing Sy.No.22/1 measuring 0.01.08 guntas,
- 2) Land bearing Sy.No.23 measuring 23 guntas,
- 3) Land bearing Sy.No.62/1 measuring 1 acre,
- 4) Land bearing Sy.No.62/10 measuring 1 acre

All the above properties situated at Manuganahalli Village, Bilikere Hobli, Hunsur Taluk.

- 5) Land bearing Sy.No.246/1 measuring 27 guntas situated at Hussainpuranala Village, Bilikere Hobli, Hunsur Taluk, Mysore Dist.
- 6) House and Site property measuring 40 feet North-South and 80 feet East-West situated at Manuganahalli Village, Bilikere Hobli, Hunsur Taluk bearing Panchayath Khata No.166/21, 167/22, 21(A), 21(B), 21(C), 22(A), 22(B) and 22(C).

Having regard to the question of imposing costs, the plaintiff has filed the present suit for her grievance and the defendants have defended for their lawful defense. Therefore, there is no order as to costs and parties to the suit shall bear their own costs. In view of the discussion made above, I answer issue No.2 **partly in the Affirmative.**

13. **ISSUE NO.3:** In view of findings given by me on the issue nos. 1 & 2, I proceed to pass the following:

ORDER

The suit of the plaintiff is hereby partly decreed.

The plaintiff is entitled for 1/20th share in the following properties;

- 1) Land bearing Sy.No.22/1 measuring 0.01.08 guntas,
- 2) Land bearing Sy.No.23 measuring 23 guntas,
- 3) Land bearing Sy.No.62/1 measuring 1 acre,
- 4) Land bearing Sy.No.62/10 measuring 1 acre

All the above properties situated at Manuganahalli Village, Bilikere Hobli, Hunsur Taluk.

- 5) Land bearing Sy.No.246/1 measuring 27 guntas situated at Hussainpuranala Village, Bilikere Hobli, Hunsur Taluk, Mysore Dist.
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The defendant Nos.1 & 2 are entitled for 1/40th share each in the suit schedule properties.

The office is hereby directed to collect the Court fee from the defendant Nos.1 & 2 with respect to their shares.

Parties to bear their own costs.

Draw Preliminary decree accordingly.

(Dictated to the stenographer directly on computer, typed by her, then corrected and orders pronounced by me in open court on this the 6th day of December 2017)

(GIRISH CHATNI)
Civil Judge & J.M.F.C,
Hunsur.

ANNEXURE

List of witnesses examined for Plaintiff:

PW-1 : Sundramma

List of witnesses examined for Defendants :

Nil

List of documents exhibited for Plaintiff:

Ex.P-1 : G.Tree,

Ex.P-2 to P-6 : RTCs,

Ex.P-7 to P-9 : Demand register extracts.

List of documents exhibited for Defendant/s:

Nil

Civil Judge & J.M.F.C,
Hunsur.

(Judgment pronounced in open court vide separate Judgment)

ORDER

The suit of the plaintiff is hereby partly decreed.

The plaintiff is entitled for 1/20th share in the following properties;

- 1) Land bearing Sy.No.22/1 measuring 0.01.08 guntas,
- 2) Land bearing Sy.No.23 measuring 23 guntas,
- 3) Land bearing Sy.No.62/1 measuring 1 acre,
- 4) Land bearing Sy.No.62/10 measuring 1 acre.

All the above properties situated at Manuganahalli Village, Bilikere Hobli, Hunsur Taluk.

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Parties to bear their own costs.

Draw Preliminary decree accordingly.

**CIVIL JUDGE & J.M.F.C.,
HUNSUR.**