

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

Present: **DEEPA G., B.A.L., LL.B.,**
Prl. Senior Civil Judge & J.M.F.C.,
C/c. Civil Judge & J.M.F.C.,
Hunsur.

Dated, this the 17th day of January, 2017

O.S.NO.86/2009

Plaintiff: Siddamma,
W/o. Late Karinayaka,
Aged about 55 years,
R/at Hosaramenahalli Village,
Bolanahalli Post,
Bilikere Hobli,
Hunsur Taluk.

(By Sri. M.D. Lokesh, **Advocate**)

V/s.

Defendants: 1. Kamma,
W/o. Late Puttaswamynayaka,
Aged about 60 years.

2. Ningajamma,
W/o. Late Devanayaka,
Aged about 45 years.

Both the defendants are
R/at Hosaramenahalli Village,
Janatha Colony,
Bolanahalli Post,
Bilikere Hobli,
Hunsur Taluk.

(D1 by Sri. N. Lokesha, **Advocate**
D2 – Exparte)

Date of institution of the Suit	:	20.03.2009
Nature of the Suit	:	Partition and Separate Possession
Date of commencement of recording of evidence	:	11.06.2015
Date on which the Judgment was pronounced	:	17.01.2017
Total duration	:	Years /s Month/s Day/s 07 09 27

(DEEPA G.)
C/c. Civil Judge & J.M.F.C.,
Hunsur.

J U D G M E N T

The plaintiff has filed the above suit against the defendants for the relief of Partition and Separate Possession, cost and such other reliefs.

2. The brief facts of the case of the plaintiff are that the plaintiff and defendants are the daughter-in-laws of Late Ningaiah @ Heecha @ Maradevana Ningamayaka. The plaintiff is the wife of Late Karinayaka i.e. the first son of Late Ningaiah. The first defendant is the wife of Late Puttaswamayaka i.e. the second son of Late Ningaiah. The plaintiff and defendants are the members of the joint family and the suit schedule property is the joint family property of plaintiff and defendants.

3. Originally, the suit schedule property was granted to Late Ningaiah. After the demise of Ningaiah, the khatha of the suit schedule property was transferred to the husband of the plaintiff. The said Karinayaka and Puttaswamayaka were in joint possession and enjoyment of the said property. After the death of Karinayaka and Puttaswamayaka, the suit schedule property is in joint possession and enjoyment of the plaintiff and defendants. But, the defendants have

created false revenue documents and are trying to alienate the suit schedule property in order to defraud the plaintiff. The prayer of the plaintiff to handover half share in the suit schedule property was denied by the defendants. Hence, this suit. Accordingly, sought to decree the suit.

4. Upon service of summons, the defendant No.1 has appeared before the Court through her advocate and filed Written Statement by admitting the alleged relationship between the plaintiff and herself and further admitted the fact that the suit schedule property was in the name of Karinayaka and contended that in order to perform the marriages of the daughters of Karinayaka and in order to repay the loan amount, the said Karinayaka had sold suit schedule property to this defendant No.1. At that time, the plaintiff was not the wife of the said Karinayaka. Only after the death of first wife of Karinayaka, the said Karinayaka married the plaintiff. Hence, the plaintiff has no right to seek Partition in the suit schedule property. After the purchase of the suit schedule property, defendant has changed the khatha of the suit schedule property in her name and is paying tax. The plaintiff is not at all in possession and enjoyment of the suit schedule property. On the other hand,

this defendant is in exclusive possession and enjoyment of the suit schedule property. There is no cause of action to file the suit. Hence, sought for dismissal of the suit with cost.

5. During the pendency of the suit and on the application of the plaintiff, one Ningajamma was impleaded as defendant No.2. Despite service of summons, defendant No.2 failed to appear before the Court. Accordingly, she was placed *exparte*.

6. Based on the material facts and pleadings, my Predecessor in the Office has framed the following:

I S S U E S

1. Whether the plaintiff proves that the suit schedule property is her joint family property, which constitute with defendant?
2. Whether the plaintiff further proves that the defendant illegally got mutated her name over the suit schedule property?
3. Whether the defendant proves that the husband of the plaintiff has alienated the suit

schedule property in her favour for his legal necessity?

4. Whether the suit of the plaintiff is bad for non-joinder of necessary parties?

5. Whether the plaintiff is entitled to receive half share in the suit schedule property as claimed?

6. What order or decree?

7. In order to prove the averments of the plaint, the plaintiff has examined herself as P.W.1 and relied upon seven documents as per Ex.P1 to Ex.P7 and closed the evidence. Defendant No.1 has neither cross-examined the P.W.1 nor adduced evidence. Accordingly, heard the arguments of the plaintiff. Defendant No.1 did not canvas arguments. Perused the material on record.

8. My findings on the above Issues are as under:

Issue No.1: In the **Affirmative**

Issue No.2: In the **Affirmative**

Issue No.3: In the **Negative**

Issue No.4: In the **Negative**

Issue No.5: In the **Affirmative**

Issue No.6: As per final order

for the following:

R E A S O N S

9. **Issue Nos.1, 3 and 5:** These Issues are interlinked with one and another and hence in order to avoid repetition of facts, I have taken up these Issues together for common discussion.

10. In order to substantiate the averments of the plaintiff, the plaintiff has filed an affidavit in lieu of chief-examination by reiterating the averments of the plaintiff and examined herself as P.W.1 by relying upon seven documents as per Ex.P1 to Ex.P7 i.e. Index of Land at Ex.P1, Record of Rights at Ex.P2, certified copies of RTC extracts at Ex.P3 and Ex.P4, RTC extract at Ex.P5, certified copy of the Judgment and Decree in O.S.No.129/1997 at Ex.P6 and Ex.P7 and closed the evidence.

11. Whereas, though the defendant No.1 has resisted the claim of the plaintiff by filing Written Statement and contended that the husband of the plaintiff i.e. Karinayaka has sold the suit schedule property to her, neither cross-examined the P.W.1 nor substantiated the same by leading evidence. Apart from that, the defendant No.1 has not at all denied the alleged relationship of the plaintiff with one Karinayaka and also herself and the fact that the suit schedule property was allotted to their father-in-law. Hence, they being the daughter-in-laws of the deceased Ningaiah @ Maradevana Ninganayaka, they are the members of joint family and the suit schedule property is their joint family property. Further, in lieu of the death of their respective husbands, they are equally entitled for the share of their husbands in the suit schedule property.

12. That apart, the evidence of P.W.1 remained unchallenged and there is nothing to disbelieve the version of the plaintiff. Further, despite the knowledge of the defendant No.1 in respect of the institution of the suit by the plaintiff and also defence taken by her, failed to substantiate her contention with cogent evidence.

13. On the other hand, though the notice on the application and the suit summons were served upon the proposed defendant No.2 / defendant No.2, neither she appeared nor resisted the claim of the plaintiff. Further, the evidence of the P.W.1 / plaintiff substantiates the averments of the plaint. As such, this Court is of the considered opinion that the suit schedule property is the joint family property of the plaintiff and defendants and is entitled for an half share in the suit schedule property. Accordingly, **Issue Nos.1 and 5** are answered in the **Affirmative** and **Issue No.3** is answered in the **Negative**.

14. **Issue No.2**: The material on record and the documents relied upon by the plaintiff reveal that the suit schedule property was granted in the name of the father-in-law of the plaintiff and defendant No.1 and after his demise, same was mutated in the name of Karinayaka, the husband of the plaintiff. This fact is not in dispute. But the defendant No.1 has failed in her attempts to substantiate the fact of alleged sale of suit schedule property by the husband of the plaintiff in her favour for his legal necessity. Hence, one can infer that the khatha in favour of defendant No.1 is illegal and accordingly, **Issue No.2** is answered in the **Affirmative**.

15. **Issue No.4**: This Issue is the outcome of the defence of the defendant No.1. Whereas, as discussed supra, the defendant No.1 has failed to substantiate the said fact. As such, the Issue on hand is answered in the **Negative**.

16. **Issue No.6**: For the aforesaid findings, I proceed to pass the following:

O R D E R

The Suit of the plaintiff is decreed with cost.

Further, the plaintiff is entitled for an half share in the suit schedule property by metes and bounds.

Office to draw Preliminary Decree accordingly.

(Dictated to the Stenographer, transcribed by her on computer, revised, corrected and then pronounced by me in the open Court on this day, the 17th January 2017)

(DEEPA G.)
C/c. Civil Judge & J.M.F.C.,
Hunsur.

ANNEXURE**List of witnesses examined by the Plaintiff :**

P.W.1: Siddamma

List of witnesses examined by the Defendants :

N I L

List of documents marked by the Plaintiff :

Ex.P1: Index of Land

Ex.P2: Record of Rights

Ex.P3 & 4: Certified copies of RTC extracts

Ex.P5: RTC extract

Ex.P6: Certified copy of the Judgment and
Decree in O.S.No.129/1997

List of documents marked by the Defendants :

N I L

(DEEPA G.)

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