

IN THE COURT OF ADDITIONAL CIVIL JUDGE & JMFC.,
KRISHNARAJANAGARA

PRESENT

Kum, Gayatri, B.Com., L.L.M., (IPR).
Additional Civil Judge & JMFC, Krishnarajanagara.

Dated 06th day of September 2019

OS No. 234/2017

PLAINTIFF : Rathnamma W/o Shreekantappa,
D/o Smt.Nanjamma and Puttappa,
Aged about 50 years,
R/at No.Thejuru Mayigowdanahalli,
Halli Mysore Hobli,
Holenarasipura Taluk,
Hassan District.

[By: Sri. P.D., Advocate]

-V/s-

DEFENDANT : 1. Sarvamangala W/o Rudrappa,
D/o Smt.Nanjamma and Puttappa,
Aged about 60 years,
R/at Koluru Village,
Chunchanakatte Hobli,
K.R.Nagar Taluk,

2. Muddappashetty
S/o Chikkabasappa Shetty,
Aged about 75 years,
R/at Maraduru Village,
Bettadapura Hobli,
Periyapatna Taluk, Mysuru District.

[D1 By: Sri. R.S.R., Advocate]

[D2 By: Sri. H.P.M., Advocate]

Date of Institution of the suit	10-04-2017		
Nature of the suit	Partition and Separate Possession		
Date of the commencement of recording of the evidence	-		
Date on which the judgment was pronounced	06-09-2019		
Total Duration	Years	Months	Days
	02	04	26

(Gayatri)
Addl. Civil Judge & JMFC.,
K.R.Nagar.

ORDER

The plaintiff has filed the suit against the defendant No.1 and 2 for the relief of partition and separate possession.

2. The brief facts of the plaintiff's case are as under:-

The plaintiff submits that the plaintiff and defendants are the sisters and they are only female heirs of Smt.Nanjamma and Puttappa. The defendant No.2 is the purchaser of the suit schedule property without her consent, she further submits that she herself along with defendant No.1 and Smt.Nanjamma constituted Hindu undivided joint family. Thereby the suit schedule property inherited by them from

their father since then the suit schedule property is their undivided ancestral and joint family property. She has further submitted that the possession of the suit schedule property is with defendant No.2 due to she being placed comfortably in her matrimonial home.

3. She further submitted that the suit schedule property is not divided by meets and bounds her father died long back and mother of the plaintiff and defendant No.1 died on 12-04-2015, subsequent to the death of her father defendant No.1 and her mother were enjoying the suit schedule property by getting katha's changed in their name in respect of the suit schedule property. The facts as to plaintiffs name was not disclosed in order to defeat the legitimate share and right of the plaintiff in respect of the suit schedule property, as she is entitled for 1/3rd share. She has further submitted that mother of plaintiff and 1st defendant has illegally sold the suit schedule property in favour of 2nd defendant through a registered sale deed by suppressing the name of the plaintiff so she is not signatory to the alleged sale deed. Hence, it is not binding on her share, she has come up with the present suit for the relief of partition and separate possession.

4. In pursuance to the suit summons, defendant No.1 appeared through her counsel, but she has not filed her written statement. Defendant No.2 has appeared through his counsel and has filed his detailed written statement.

5. The brief facts of the written statement filed by defendant No.2 are as under:

Defendant No.2 in his written statement denied all the plaint averments made by the plaintiff admitting the fact of their genealogy. But, has admitted the fact that the suit schedule property being the ancestral property of the plaintiff family. He has further contended that the suit schedule property being the ancestral property of Puttappa. After his demise the mother of plaintiff and 1st defendant has executed a registered sale deed in respect of suit schedule property in order to repay the hand loans of their family and this defendant being the purchaser of the said schedule property for a valuable consideration through registered sale deed under MR 4/2005-06. Thereby the khata standing in his name and he is paying tax in respect of the said schedule properties. He has further contended that fact of death of her mother on 12-04-2015 is admitted. But, prior to her death i.e., 10 years back she has executed the present sale deed in favour of 2nd defendant for a total consideration of Rs.10,000/-

in the presence of witnesses. Hence, prayed for dismissal of the present suit with exemplary cost.

6. In view of the rival pleadings and materials available on record my predecessor in office have framed the following preliminary issue.

PRELIMINARY ISSUE NO.3

3. Whether the defendant No.2 proves that the suit of the plaintiff is barred under the law by virtue of Section 6 of Amendment Hindu Succession Act 2005?

5. What order or decree?

7. This court findings on the above points for consideration are as under:

**Preliminary Issue No.3 : In the Affirmative
Issue No.5 : As per final order for
the following:**

: REASONS :

8. PRELIMINARY ISSUE NO.3:

In order to discharge the burden casted upon plaintiff, the plaintiff has submitted that plaintiff, defendant No.1 and her deceased mother constituted joint Hindu undivided family and suit schedule property being the ancestral property of themselves and she is thereby entitled for 1/3rd legitimate

share in the suit schedule property. In the present suit sale in respect of suit schedule property was caused on 22-05-1990 between plaintiffs mother, 1st defendant and 2nd defendant.

9. The contention of the plaintiff in the present suit is that defendant No.1 and her mother has sold the property in favour of 2nd defendant without her consent and she is not signatory to the alleged sale deed being without her consent. Hence, it is not binding on her 1/3rd share. Thereby she is claiming for partition in respect of the suit schedule property. Defendant No.2 has specifically contended in his written statement that plaintiff's coming to know about considerable increase in the price of the schedule property, thereby come up with the present suit only on the said ground that she is not the signatory to the alleged sale deed further contended that according to Sec 6(c) and proviso to the said section of the Hindu Succession Act 1956. Wherein any deposition or alienation including any partition are testamentary dispossession of property which are taken place before the 20th Day of December 2004 shall not be affected. This proviso is very much clear as to allotment of share in respect of ancestral joint family property to a female legal heir is only such to the conditions those mentioned in Sec 6 of the Hindu Succession Act.

10. Wherein the property involved in the dispute must be a joint family property and on the date of said amendment daughter and the father must be alive and moreover if in case any partition or deposition of property or alienation of property by virtue of a registered instrument shall not be affected. This being the present position of law laid down by virtue of amendment to the Hindu Succession Act is admitted fact that the suit schedule property was sold by plaintiffs mother and defendant No.1 by virtue of a registered sale deed in favour of 2nd defendant on 22nd May 1990. Moreover, if the present sale sought to be challenged it get to be done only by a male heir and not by the female heir and this being the position and present preposition of law, the present suit is clearly hit by Sec 6 of Hindu Succession Amendment Act sale is prior to 2004.

11. Moreover it is a registered instrument plaintiff cannot challenged the same. Hence, this court finds no any reasons to hold plaintiff entitled for the relief claimed by her by virtue of the present suit and it is also the admitted fact that her father was died very long back since this being the faith of present suit. Hence, without further discussion this court proceeds to answer this point accordingly.

12. ISSUE No.5:

In view of the above discussion and the reasons stated therein this court proceeds to pass the following:

ORDER

The suit of the plaintiff is hereby dismissed with cost.

Office to draw decree Accordingly.

[Dictated to the Steno, transcribed by her and corrected by me and pronounced in the Open Court this the 05th day of April 2019]

(Gayatri)
Addl. Civil Judge & JMFC.,
K.R.Nagar.