

**IN THE COURT OF THE PRL. CIVIL JUDGE & JMFC,
KRISHNARAJANAGAR**

PRESENT

**SRI. SRINATH.K, B.A.L., LL.B.,
PRL.CIVIL JUDGE & JMFC., K.R.NAGAR**

O.S.No.285/2013

Dated this the 4th day of June, 2018

PLAINTIFFS:

- 1.Kum.Pushpalatha D/o Krishnegowda, 20 years,
- 2.Kum.Devaki D/o Krishnegowda, 18 years,

Both are R/a #4, Shrirama Block,
Bovi Colony, K.R.Nagar Town.

[By Sri.L.V.R., Advocate]

V/S

DEFENDANTS:

- 1) Krishnegowda S/o late Kenchegowda, 50 years,
- 2) Srinivasa S/o late Kenchegowda, 48 years,
Both are R/a Kestur village,
Churchankatte Hobli, K.R.Nagar Taluk.
- 3) Mani W/o Nanjunda
46 years, R/a Boregowdana Koppalu,
Gavadagere Hobli, Hunsur Taluk.
- 4) Nagarathna W/o Basavaraju,
R/a Agrahara village, Gavadagere Hobli,
Hunsur Taluk.
- 5) Krishnanayaka S/o Kalanayaka,
52 years, R/a Malali village,
Churchankatte Hobli, K.R.Nagar Taluk.

- 6) Thyagaraja S/o Srinivasa,
21 years, R/a Kesthur village,
Chunchankatte Hobli,
K.R.Nagar Taluk, Mysuru District.

**(D-2 by Sri.S.N., Advocate,
D-3,4 by Sri. H.K.U., Advocate
D-6 by Sri M.D.K., Advocate
D-1, D-5 Exparte)**

Date of institution of suit	11.7.2013		
Nature of suit	Partition and Separate Possession		
Date of commencement of recording of the evidence	01.09.2016		
Date on which the judgment was pronounced	04.06.2018		
Total Duration	Years	Months	Days
	04	10	23

**(SRINATH.K)
PRL.CIVIL JUDGE & JMFC,
K.R.NAGARA.**

J U D G M E N T

This is a suit for partition and separate possession of the suit schedule properties.

The case of the plaintiff is as under:

2. The plaintiffs submit that, the plaintiffs are the children of 1st defendant, the defendant No.2 to 4 are the Uncle and

Aunty of the plaintiffs, the defendant No.5 is the purchaser, defendant No.6 is the son of 2nd defendant. The plaintiffs submit that, the plaintiffs and defendant No.1 to 4 have constituted Hindu undivided joint family, the suit properties are the ancestral and joint family properties of the plaintiffs. The suit properties originally acquired by the propositor of the family of the plaintiffs and defendants by name Kenchegowda, grandfather of the plaintiffs, father of the defendant No.1 to 4. After the death of Kenchegowda, the revenue entries transferred in the name of 2nd defendant, who has manager of the family of the plaintiffs and defendants. The defendant No.1 was addicted to bad habits, he was doing wayward life, the defendant No.1 has not lookafter plaintiff and mother. Thereby, the mother of the plaintiffs doing coolie by eking-out their livelihood. The plaintiffs have approached the second defendant to give their legitimate 1/8th share over the suit schedule properties, he has refused to give their share. Prayed to decree the suit.

3. In spite of service of summons, the defendant No.1 and 5 have remained absent, they have placed exparte. Defendant No.2 to 4 and 6 have appeared through their counsel by filing vakalathnama. The defendant No.2 filed written statement. The defendant No.3,4 and 6 have not filed written statement. The defendant No.2 in the written statement, he has admitted

the relationship of the parties and also he has admitted that, the suit properties are the ancestral and family properties of the plaintiffs and defendant No.1 to 4 and 6. The defendant contended that, the father of the defendant No.2 by name Kenchegowda was executed Will dated 3.3.2003 in favour of defendant No.6 in respect of the portion of the item No.4 i.e., 1 acre and in Sy.No.576/3 measuring 0-013 guntas in favour of 6th defendant. Thereby, the said property is the absolute property of the 6th defendant, except the said property and other suit properties, the plaintiffs and defendant No.1 to 4 and 6 having equal share. Prayed to dismiss the suit against the portion of the item No.4 i.e., 1 acre, prayed to decree the suit in respect of other properties.

4. Based on the above pleadings, the following issues have framed for my consideration:

ISSUES

- 1) Whether plaintiffs proves that, suit properties are the ancestral and joint family properties of plaintiffs and defendant No.1 to 4?
- 2) Whether the plaintiffs proves that, the sale deed dated 30.5.2005 executed by the 2nd defendant in favour of 5th defendant is not binding on the 1/8th share of the plaintiffs?

- 3) Whether the defendant No.2 proves that Kenchegowda executed Will dated 3.3.2003 in favour of defendant No.6 in respect of item No.4 of suit property measuring 1 acre and Sy.No.576/3 measuring 0-013 guntas?
- 4) Whether the plaintiffs are entitled for reliefs prayed for?
- 5) What order or decree?

5. In order to prove the case of the plaintiffs, the 2nd plaintiff herself examined as PW-1 and got marked documents Ex.P.1 to P-21. In spite of giving sufficient opportunities, the defendants have failed to cross-examine the PW-1. The defendants have not chose to examine any witness on their behalf and they have not produced any documents.

6. I have heard the arguments of the learned counsel for the plaintiffs. The defendants and their counsel absent, they have not addressed the arguments.

7. My findings on the above issues are as follows:

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| ISSUE No.1 | : In the affirmative. |
| ISSUE No.2 | : In the affirmative. |
| ISSUE No.3 | : In the negative. |
| ISSUE No.4 | : In the affirmative. |
| ISSUE No.5 | : As per final order for the following: |

REASONS

8. ISSUE No.1:

In order to prove the case of the plaintiffs, the plaintiff No.2 herself examined as PW-1 and got marked documents Ex.P.1 to P-21. The plaintiffs reiterated the plaint averments, in her evidence state that, the plaintiffs and defendant No.1 to 4 have constituted Hindu undivided joint family. The suit properties are the ancestral and joint family properties of plaintiffs and defendant No.1 to 4. The plaintiffs approached the defendants to give their legitimate 1/8th share, the defendants have refused to give their share.

9. The plaintiffs produced the genealogical tree marked as Ex.P.1. The genealogy of the plaintiffs and defendant No.1 to 4 have not disputed by the parties. The plaintiffs produced the RTC extracts pertaining to the suit properties marked as Ex.P.2 to 12. On perusing the RTC extracts, item No.1 of suit property bearing Sy.No.111/4 is stands in the name of Kenchegowda S/o Appajigowda grandfather of the plaintiffs and defendant No.2 and 3 jointly. The item No.2 and other suit properties have also stands in the name of late Kenchegowda, after his demise, the said properties have transferred in the name of 2nd defendant. The record of rights produced and marked as Ex.P.13 and P-16, it shows that, the

mutation has been transferred in the name of 2nd defendant, after the death of his father. The index of lands produced and marked as Ex.P.14 and P-17 also confirms that, the suit properties are the ancestral and family properties of the plaintiffs and defendant No.1 to 4. The defendants have also not disputed that, the suit properties are ancestral and joint family properties of the plaintiffs and defendants. The plaintiffs produced the demand register extracts pertaining to the house property, the same is stands in the name of defendant No.2 and his father by name Kenchegowda. The Item No.7 of the suit property also stands in the name of grandfather of the plaintiffs by name Kenchegowda. On perusing the Ex.P.1 to P-21 documents and oral evidence of plaintiffs, it is clear that, the suit properties are the ancestral and family properties of the plaintiffs and defendant No.1 to 4 and 6. The said properties are stands in the name of Kenchegowda, after his demise, some of the properties have transferred in the name of 2nd defendant, remaining properties continued to be in possession of said Kenchegowda. The defendant No.2 in his written statement also admitted that, suit properties are the ancestral and family properties of plaintiffs and defendant No.1 to 4. In spite of giving sufficient opportunities, the defendants have not chose to cross-examine the PW-1. The testimony of the PW-1 not challenged by the

defendants. Hence, the evidence and documents on record clearly shows that, suit properties are the ancestral and family properties of the plaintiffs and defendant No.1 to 4 and 6. Accordingly, **I answer issue No.1 in the affirmative.**

10. **ISSUE No.2:**

The plaintiffs contended that, the defendant No.2 sold the portion of the suit property in favour of 5th defendant under the registered sale deed dated 30.5.2005, the same is not binding on the share of the plaintiffs. In order to substantiate the same, the plaintiffs have produced the certified copy of the sale deed dated 30.5.2005 marked as Ex.P.19. On perusing the same, the 2nd defendant sold the property bearing Sy.No.111/4 measuring 0-028³/₄ guntas in favour of 5th defendant Krishnanayaka. In pursuance of said sale deed, the mutation also transferred in the name of Krishnanayaka. The defendants in his written statement, he has stated that, he has sold the said property for the legal and family necessities. However, in order to substantiate the same, the defendant No.2 not examine himself and he has not produced any document to show that for the family necessities, he has sold the said property in favour of 5th defendant. In spite of service of summons, the defendant No.5 purchaser, failed to appear the court, hence he was placed

exparte. The defendant has not chose to cross-examine PW-1 inspute of giving sufficient opportunities. The testimony of PW-1 and documents produced by the plaintiffs Ex.P.1 to P-21 are not challenged by the defendants. The defendant No.2 except filing the written statement stating that, he has sold the said property for the family necessities, he has not substantiate the same by producing cogent and convincing evidence. Ex.P.19 clearly shows that, defendant No.2 alone sold the said property in favour of defendant No.5. Thereby, the said sale deed is not binding on the share of the plaintiffs and other defendant No.1,3 and 4. Accordingly, **I answer issue No.2 in the affirmative.**

11. **ISSUE No.3 :**

This issue arose that, the defendant No.2 in his written statement contended that, Kenchegowda propositor of the family of the plaintiffs and defendants have bequeathed the portion of item No.4 i.e., measuring 1 acre and Sy.No.576/3 measuring 0-13 guntas in favour of his son by name Thyagaraja defendant No.6 herein. Thereby, the said property is the absolute property of defendant No.6. Later, the defendant No.6 has impleaded in the suit. Inspite of service of summons, the defendant No.6 failed to appear the court, he was placed exparte. The defendant No.2 except filing the

written statement contending that, Kenchegowda was executed Will dated 3.3.2003 in favour of defendant No.6, he has not chose to produce the alleged Will in order to substantiate the same. The defendant also not chose to examine himself to substantiate his written statement, he has not chose to examine the attesting witnesses of the alleged Will as contemplated U/s.68 of Indian Evidence Act. Thereby, mere taking the contention of the written statement not producing the alleged Will, not examine any witness that itself is not sufficient to prove the Will. The defendants not chose to cross-examine PW-1, thereby the testimony of PW-1 is not challenged. The defendant No.2 failed to prove that, Kenchegowda has executed Will dated 3.3.2003 in favour of defendant No.6 bequeathing the portion of the item No.4 and Sy.No.576/3 measuring 0-013 guntas. Accordingly, **I answer issue No.3 in the negative.**

12. **ISSUE No.4 :**

In the light of the above discussions and findings given on issue No.1 to 3 as above, the plaintiffs being the children of 1st defendant, they have equal share over the suit schedule properties along with defendant No.1 to 4. Thereby, the plaintiffs are entitled 1/8th share over the suit schedule properties along with the defendant No.1 to 4. The 1st

defendant is entitled 1/8th share, defendant No.2 to 4 are entitled 1/4th share each over the suit schedule properties. Accordingly, **I answer issue No.4 in the affirmative and proceed to pass the following order as answer to issue No.5.**

ORDER

The suit of the plaintiffs is hereby decreed with cost.

It is declared that, the plaintiffs together entitled 1/8th share over the suit schedule properties.

Accordingly, divide the same by meets and bounds and put them in separate possession of their respective shares.

Separate enquiry is required to ascertain the mesne profits as contemplated U/O 20 R-18 of C.P.C.

Office to draw preliminary decree accordingly.

(Dictated to the Stenographer, transcribed by him, corrected by me and then pronounced in the open court on 4th day of June, 2018)

**(SRINATH.K)
PRL.CIVIL JUDGE & JMFC,
K.R.NAGARA.**

ANNEXURE**LIST OF WITNESSES EXAMINED FOR PLAINTIFF:**

PW-1 Devaki

LIST OF WITNESSES EXAMINED FOR DEFENDANT: Nill**LIST OF DOCUMENTS MARKED FOR PLAINTIFF:**

Ex.P.1 : Genealogical tree
Ex.P.2-12 : RTC extracts
Ex.P.13 & 16 : Record of rights
Ex.P.14 & 17 : Index of lands
Ex.P.18 : Endorsement
Ex.P-19 : CC of sale deed
Ex.P-20 : Demand register Extract
Ex.P-21 : RTC

LIST OF DOCUMENTS MARKED FOR DEFENDANT: Nill

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