

KAMS410010412020



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

PRESENT

Smt. Gayatri., B.Com., LL.M (IPR)
Additional Civil Judge & JMFC, Krishnarajanagara.

Dated 11th day of April 2023

O.S. No.212/2020

PLAINTIFFS : Suresha,
S/o K.M.Ramachandra,
aged about 37 years,
R/at Kaggere village, Kasaba hobli,
K.R.Nagar taluk.

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

-V/s-

DEFENDANTS : 1. K.M.Ramachandra,
S/o late Dyavegowda,
aged about 70 years,

2. Nagamma,
W/o K.M.Ramachandra,
aged about 60 years,

3. K.R.Shivakumar,
S/o Devegowda,
aged about 41 years,
4. Geethamani,
W/o K.R.Shivakumar,
aged about 35 years,

All are R/at Kaggere village,
Kasaba hobli, K.R.Nagar taluk.

5. Jyothi,
W/o Jayanna,
D/o K.M.Ramachandra,
R/at Alanahalli village,
Hampapura hobli,
H.D.Kote taluk.

[By: Sri. M.R., Advocate for D1 and 2]

[By: Sri. J.G., Advocate for D3 to 5]

Date of Institution of the suit	08.09.2020
Nature of the suit	Partition and Separate Possession
Date of the commencement of recording of the evidence	15.09.2021
Date on which the judgment was pronounced	11.04.2023

Total duration	Years	Months	Days
	02	07	03

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

JUDGMENT

Plaintiff has filed present suit against defendants for the relief of partition and separate possession along with court costs and such other relief as this court deems fit under the fact and circumstances of the present case in the interest of justice and equity.

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

The plaintiff submits that, suit schedule properties are the ancestral properties of plaintiff and defendants. The suit schedule properties are purchased out of the income derived from the ancestral properties and as such the Khata's in respect of item No.2 property as standing in the name of Defendant No.3 and 4. As there was no co-operation and co-ordination between the plaintiff and defendants, plaintiff requested defendant for partition and separate possession of the suit schedule properties which was refused by the defendants.

3. Plaintiff further submits that, there was a Panchayath conveyed in that respect but it was unfruitful . Hence, he left with no other option has filed the present suit against the defendants for the relief of partition and separate possession.

4. Per contra in pursuance to the suit, suit summons were issued to defendant No.1 to 5 they appeared through respective counsels. When the matter was posted for arguments learned counsel for Defendant No.3 to 5 filed IA seeking permission to file written statement by condoning delay, which came to be allowed by this court. The written statement of defendant No.3 to 5 was taken on record.

5. Brief averments of written statement filed by the defendant no.3 to 5 are as under:

Defendants have denied all the allegation made by the plaintiff as to the fact of suit schedule properties being joint family properties of plaintiff and defendants as alleged by plaintiff as false.

6. Defendants have also denied the allegation that suit schedule properties being ancestral properties of themselves and the Item No.2 property was purchased out of joint family

income in name and favour of 3rd and 4th defendant as false by placing the plaintiff into strict proof of said facts.

7. Defendants further contended that, at no point of time item No.2 property was purchased in the name of Defendant No.3 and 4 by utilizing joint family income and at no point of time Panchayath was conveyed as alleged by plaintiff demanding partition which was refused by these defendants. They have contended that Item No.2 property is their separate property.

8. They have further submits that, certain true facts as under:

Defendants No.3 to 5 submits that, the suit schedule item No.1, 3 and 4 are the properties belonging to plaintiff, defendant No.4 and 5. the suit schedule item No.2 property was purchased by Defendant No.3 and 4 through a registered sale deed on dated 24.03.2012 from their vendor Devarajegowda S/o Kempaiah resident of Narayanapura Village, Kasaba Hobli, K.R.Nagara Taluk along with his wife P.C.Sudharani and their daughters by name N.J.Shyala, N.J.Mangala and N.J.Geethamani and N.J.Chaithra for valuable consideration. After the fact of purchase defendant No.3 and 4 were in put in possession. The Item No.2 suit

schedule property is land bearing Sy.No.12/1 measuring 0.39 guntas out of total extent 2.19 acres purchased by 3rd and 4th defendant. After the fact of purchase of sale by Defendant No.3 and 4 are paying revenue to the concerned revenue Authority. As such the suit of the plaintiff in respect of item N.2 against defendant No.3 and 4 is not maintainable. Hence prayed for dismissal of suit with exemplary cost.

9. The following points arise for this court consideration:

1. Whether the plaintiff proves that, the suit schedule properties are the ancestral properties of himself and defendants ?

2. Whether defendant No.3 to 5 proves that suit schedule item No.2 property is separate property of defendant No.3 and 4 ?

3. Whether defendant No.3 to 5 further proves that Item No.1, 3 and 4 properties are belonging to plaintiff, defendant No.4 and 5 as alleged by them in their written statement ?

4. Whether plaintiff is entitled for relief of partition and separate possession ? If so to what share ?

3. What order or decree?

10. Plaintiff has examined himself as PW-1 and submitted 8 documents by getting them marked as Ex.P1 to 8. As defendant No.3 to 5 have filed written statement by admitting plaintiff's claim in part and as defendant No.3 to 5 after filing written statement have not proceeded with the matter. Hence it was taken as no defense evidence.

11. This court heard arguments of learned counsel for plaintiff. As defendant No.3 to 5 after filing written statement did not appear to proceed with the matter. Hence this court by reserving the rights of defendant No.3 to 5 to submit written arguments on or before 03.04.2023 posted matter for judgment.

12. This court proceeds to answer the above issues for consideration as under.

Issue No.1 : In the **Affirmative**
Issue No.2 : In the **Negative**
Issue No.3 : In the **Affirmative**
Issue No.4 : In the **Affirmative**
Issue No.5 : As per final order
for the following:

REASONS

13. Issue No.1 to 3:

For the facts and circumstance of the suit is concern these issues are interlinked and to avoid the repetition these issues are taken up together for common discussion.

Plaintiff in order to discharge the burden casted upon him, he has examined himself as PW1 filed affidavit in lieu of examination-in-chief by producing 8 documents by getting them marked as Ex.P-1 to 8. Ex.P1 and 2 are the RTC's, Ex.P3 and 4 are Online MR Extracts, Ex.P5 and 6 are Certified copies of Demand Tax register extract, Ex.P7 is the Genealogical Tree, Ex.P8 is the Online copy of registered sale deed on dated 24.03.2012.

14. It is the specific allegation of the plaintiff that, himself and Defendant No.1 to 5 are the members of the joint family. The suit schedule properties are the ancestral and Joint family properties of himself and Defendant No.1 to 5. he has further alleged that the Item No.2 schedule property was purchased by members of joint family in the name and favour of 3rd and 4th defendant out of income accrued from the joint family properties, as such item No.2 property is also the joint and ancestral property of himself and the defendants.

15. During the subsequent stage of proceedings defendant No.3 to 5 appeared and filed an application seeking permission to file written statement by condoning the delay. The said application came to be allowed by this court with a cost of Rs.600/- by noting the delay caused in filing the same. After that the written statement was taken on record. The matter was posted for compliance U/s 89 of CPC. No such compliance was reported. This court framed issues by casting burden upon defendant No.3 and 4 to prove the fact that suit schedule item No.2 property is the separate property of Defendant No.3 and 4 as alleged by them in their written statement. But, to prove the said aspect neither the defendant has complied with the cost nor has come forward to cross examine PW1, in spite of sufficient time and opportunity given by this court have not proceeded with the matter by cross examining PW1 and by leading defense evidence.

16. Issue No.1 has been framed by this court by casting burden upon the plaintiff to prove the fact that suit schedule properties are the ancestral properties of himself and defendant No.1 to 5. The relationship between parties is admitted by the defendants. The only contention of the defendant No.3 to 5 by virtue of their written statement is that

item No.1, 3 and 4 are the joint family properties of plaintiff and defendant No.4 and 5 but the item No.2 schedule property is separate property of defendant No.3 and 4. In order to substantiate their defense defendant No.3 and 4 have not submitted either oral or documentary evidence to believe their defense. However, defendant No.3 and 4 has to prove the source of income which is separate and independent income out of joint family income with which they have purchased the alleged item No.2 property. On record item No.1, 3 and 4 properties are the agricultural lands as such it can be presumed that there is a sufficient source for joint family income and hence the item No.2 property has been purchased by the members of joint family out of joint family income in the name and favour of joint family member ie., defendant No.3 and 4. Hence it is clear that defendant No.3 and 4 have utterly failed to prove the burden casted upon them with regard to issue No.2.

17. As per the plaint averments plaintiff has alleged that Item No.1 to 4 properties are the ancestral properties of himself and defendants with regard to said aspect the defendant No.3 to 5 have filed their written statement admitting the fact of Item no.1, 3 and 4 are the ancestral properties of plaintiff and Defendant No.4 and 5. As such it is clear that there is no

dispute regarding the nature of item No.1, 3 and 4 property. Hence, without further discussion proceeds to answer these issues accordingly.

18. ISSUES NO.4:- When issue No.1 to 3 have been answered in favour of plaintiff, as such plaintiff is entitled for 1/4th share in respect of suit schedule item No.1 to 4 properties. Defendant No.2 is the wife of 1st defendant and mother of plaintiff. Defendant No.4 is the wife of 3rd defendant and Defendant No.5 is the sister of plaintiff and daughter of Defendant No.1 and 2. Defendant No.5 being the daughter and female member of the family is also entitled for equal share as per the present law. Defendant No.2 and 4 being the wife's of defendant No.1 and 3 respectively and during the lifetime of their husband's are not entitled for separate shares. Hence, without further discussion this court proceeds to answer this issue accordingly.

19. ISSUES NO.5:- In view of the above discussion and reasons mentioned therein, this court proceeds to pass the following:

ORDER

The suit of the plaintiff is hereby
decreed.

By looking into the relationship between the parties, no order as to cost.

Further plaintiff is entitled for 1/4th share in suit schedule item no.1 to 4 properties. Likewise, defendant No.1, 3 and 5 are entitled for 1/4th share each in suit schedule item No.1 to 4 properties.

However, defendant no.1, 3 and 5 are liable to pay separate court fee for carving out their respective shares.

Office to draw preliminary decree Accordingly.

Office to put up file for FDP after expiry of appeal period.

[Dictated to the Steno, transcribed by her. Corrected and then pronounced by me in the Open Court on this the 11th day of April 2023]

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

ANNEXURE

1. List of witnesses examined for plaintiffs:-

PW.1 : Suresh

2. List of documents marked for plaintiffs :-

Ex.P-1-2 : RTC Extracts
Ex.P-3-4 : M.R.Extracts
Ex.P-5-6 : Certified copies of Demand registers
Ex.P-7 : Genealogical Tree
Ex.P-8 : Certified copy of sale deed

3. List of witnesses examined for Defendants:- NIL

4. List of documents marked for Defendants:- NIL

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

(Order pronounced in open court vide separate Judgment)_

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