

**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.461/2012

Dated this the 2nd day of April, 2018

PLAINTIFFS:

- 1) Nagamma W/o Venkategowda, 75 years,
- 2) Sanna Thayamma W/o Venkatesha, 58 years,

Both are R/a Rajarajeshwari Nagar, Bangalore.

- 3) Thammannegowda S/o Venkategowda, 56 years,
- 4) Puttaramegowda S/o Venkategowda, 54 years,
- 5) Yogesha S/o Venkategowda, 50 years,
- 6) Shobha W/o Nagaraja, 47 years,
R/a Kaval Hosuru Village,
Hosaagrahara Hobli, K.R.Nagar Taluk.

Pltf.No.1, 3 to 5 R/a Munjanahalli village,
Hosaagrahara Hobli, K.R.Nagara Taluk.

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

V/S

DEFENDANTS:

- 1) Gowramma W/o late Rajegowda, 65 years,
- 2) Jayalakshmi W/o Ashwath, 24 years,
R/a Hosur Kallahalli village, Kasaba Hobli,
K.R.Nagar Taluk.

- 3) Suguna, 22 years,
R/a Jakanahalli village,
Halli Mysore Hobli, Holenarasipura Taluk.
- 4) Jayashankara s/o late Rajegowda, 18 years,
5) Chandregowda S/o Helavegowda, 60 years,
6) Govindgowda S/o late Kullegowda, 61 years,
R/a Gulivinatha Kuppe village,
Hosaagrahara Hobli, K.R.Nagara Taluk.
- 7) Yogesh S/o Ramegowda, 36 years,

Deft.No.1,4,5 & 7 are R/a Munjanahalli village,
Hosa Agrahara Hobli, K.R.Nagara Taluk.

**(D-5 by Sri.P.D., Advocate,
D-7 by Sri. K.V.U., Advocate
D-1 to 4, 6 Exparte)**

Date of institution of suit	27.11.2012		
Nature of suit	Partition and Separate Possession		
Date of commencement of recording of the evidence	8.7.2016		
Date on which the judgment was pronounced	2.4.2018		
Total Duration	Years 05	Months 04	Days 05

**(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, plaintiffs and defendant No.1 to 4 have constituted Hindu undivided joint family. The husband of the 1st plaintiff, father of the plaintiff No.2 to 6 by name Venkategowda married Nagamma through her one Rajegowda was born. Rajegowda married 1st defendant Gowramma, the defendant No.2 to 4 are the children of 1st defendant and Rajegowda. After the death of Ningamma, Venkategowda married plaintiff No.1. Plaintiff No.2 to 6 are the children of Venkategowda and Nagamma. The suit properties are the ancestral and family properties of the plaintiffs and defendant No.1 to 4. Venkategowda has acquired the suit properties under the registered partition deed dated 9.11.1953 entered between Venkategowda and his brother Helvegowda. Defendant No.2 to 4 have illegally executed the sale deed in favour of defendant No.6 in respect of item No.2 of the suit property on 17.11.2000, the same is not binding on the plaintiffs. The defendant No.2 to 4 have executed sale deed dated 30.1.2013 in favour of defendant No.7 in respect of item No.1 of the suit property. During the

pendency of the suit, the same is hit by law of lis-pendency, the said sale deed is not binding on the share of the plaintiffs. The defendant No.2 to 4 have exclusive right over the suit schedule properties. The defendant No.5 is the son of Helvegowda i.e., brother of Venkategowda. The defendant No.5 illegally changed the khatha in his favour as per the orders of the Asst. Commissioner, the defendant No.6 and 7 are the purchasers of the suit schedule properties. The plaintiffs are entitled 1/7th share each over the suit schedule properties. Prayed to decree the suit.

3. In spite of service of summons, defendant No.1 to 4 and 6 have failed to appear the court. Hence, they have placed exparte. The defendant No.5 appeared through his counsel by filing vakalathnama and written statement. In the written statement, the defendant No.5 admitted the relationship of the parties and also plaint averments. The defendant No.5 contended that, under the partition deed dated 9.11.1953 the father of the defendant No.5 Helvegowda has acquired 3.4 acres and 1 acre, accordingly the mutation has been effected as per the orders of the Asst. Commissioner. The plaintiffs unnecessarily impleaded the defendant No.5 in this suit. The father of the defendant No.5 and husband of the plaintiff No.1 and father of the other plaintiffs Venkategowda have

partitioned the suit properties on 9.11.1953. Prayed to dismiss the suit against the defendant No.5.

4. The defendant No.7 filed written statement, in his written statement he has denied the plaint averments, the defendant contended that, he was purchased the item No.1 of the suit property bearing Sy.No.25/3 measuring 0-037 guntas under the registered sale deed dated 30.1.2013 from the defendant No.1 to 4 by paying valid sale consideration amount. The defendant No.1 to 4 having legal and family necessities to sell the suit properties. Thereby, he is the bonafide purchaser of the suit property. Prayed to dismiss the suit against the item No.1 of the suit property.

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

I S S U E S

- 1) Whether plaintiffs prove that, the suit schedule properties are the ancestral joint family properties of plaintiffs and defendants?
- 2) Whether plaintiffs proves that they are entitled to 1/7th share in the suit schedule properties?

- 3) Whether the plaintiffs prove that the alleged sale deed dated 17.11.2000 and 30.1.2013 are null and void and not binding upon the plaintiffs?
- 4) Whether the plaintiffs are entitled for the relief sought?
- 5) What order or decree?

ADDITIONAL ISSUE:

- 1) Whether defendant No.7 proves that he is the bonafide purchaser of the suit schedule item No.1 property?

6. In order to prove the case of the plaintiffs, Nagamma examined as PW-1, later she has failed to tender for cross-examination, hence, her evidence was discarded on 3.10.2017. One Puttaramegowda plaintiff No.4 examined as PW-2 and got marked documents Ex.P.1 to P-41. On behalf of defendants, defendant No.5 examined as DW-1, got marked document Ex.D.1. Defendant No.7 examined as DW-2, got marked documents Ex.D.2 to 9. One M.K.Rajegowda examined as DW-3.

7. I have heard the arguments of the learned counsel for the plaintiffs and defendant No.5 and 7.

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

ISSUE No.1 : In the affirmative.

ISSUE No.2 : In the affirmative.

ISSUE No.3 : In the affirmative.

ISSUE No.4 : In the affirmative.

Additional Issue No.1: In the negative.

ISSUE No.5 : As per final order for the following:

REASONS

9. ISSUE No.1 to 3 and Addl.Issue No.1:

These issues are inter-linked with each other. In order to avoid the repetition of facts and discussion, I have taken these issues together for my common discussion.

In order to prove the case of the plaintiffs, plaintiff No.4 examined as PW-2 and got marked documents Ex.P.1 to P-41. He has produced the Record of Rights, Index of lands marked as Ex.P.1 and P-2, genealogical tree marked as Ex.P.3, RTC marked as Ex.P.4, mutation register marked as Ex.P.5, original registered partition deed marked as Ex.P.6, certified copies of sale deeds marked as Ex.P.7 and P-8, orders of Asst.Commissioner marked as Ex.P.9 and P-10, Record of rights marked as Ex.P.11 to P-13, Index of lands marked as Ex.P.14 to P-16, RTC extracts marked as Ex.P.17 to P-27, demand register marked as Ex.P.28, mutation register extracts marked as Ex.P.29 to P-33, office copy of legal notice dated

23.1.2013 marked as Ex.P.34, postal receipt marked as Ex.P.35, postal acknowledgment marked as Ex.P.36, notice dated 10.12.2012 marked as Ex.P.37, letter issued by the Postal Department dated 21.1.2014 marked as Ex.P.38, RTC marked as Ex.P.39, mutation register extracts marked as Ex.P.40 and P-41.

10. On careful perusing the documents produced by the plaintiffs, the demand register, RTC extracts pertaining to the suit properties, it clearly shows that, the suit properties acquired by the Venkategowda during his life time through his ancestors. Venkategowda and his brother Helvegowda have partitioned the suit properties as per Ex.P.6 registered partition deed dated 9.11.1953. Under the partition, "A" schedule fell to the share of Helvegowda, "B" schedule fell to the share of Venkategowda. On perusing the schedule "B" of Ex.P.6 partition deed, Sy.No.1/1 out of 5.39 acres half share, Sy.No.2/11 0-06 ½ guntas, Sy.No.1/2 out of 1.18 acres half share 0-029 guntas, Sy.No.3(7) out of 0-019 guntas, 0-09½ guntas, Sy.No.9/4 out of 0-02 guntas 0-01 gunta, Sy.No.2(3) out of 0-011 guntas, 0-05½ guntas, Sy.No.5/9 out of 0-012 guntas, half share 0-06 guntas, Sy.No.25/1 Arkere village out of 5.34 acres, half share i.e., 2.39 acres and in house properties equal share allotted between Venkategowda and Helvegowda. On perusing the RTC extract Ex.P.4 the suit item

No.1 Sy.No.25/1 stands in the name of defendant No.1 to 4 jointly. The same has been mutated through pouthi katha under M.R.No.H19/2011 from Rajegowda. The mutation register also produced and marked as Ex.P.5 confirms the same. Sy.No.1/1, stands in the name of Venkategowda and Helvegowda sons of Doddegowda as per Ex.P.14 index of lands. Sy.No.2/11, 3/7, 5/3 stands in the name of Venkategowda as per Ex.P.15 index of lands. Sy.No.5/7, 5/9, 9/4 stands in the name of Venkategowda as per Ex.P.16. The plaintiffs have also produced the RTC extracts pertaining to the suit property. On perusing the RTC Sy.No.1/1 item No.3, Sy.No.1/2 item No.4, Sy.No.3/6 item No.5, Sy.No.3/7 item No.6, Sy.No.5/3 item No.6, Sy.No.5/7 item No.6, Sy.No.5/9 item No.6, Sy.No.9/4 item No.7, Sy.No.2/11 item No.8 suit properties stands in the name plaintiff No.1, plaintiff No.3 to 5 herein jointly. It clearly shows that, the said property is the ancestral property of plaintiffs and defendant No.1 to 4. On perusing the record of rights produced by the plaintiffs Ex.P.11, P-12, it clearly shows that the house properties item No.5 to 11 stands in the name of Venkategowda. On careful perusing the RTC extracts produced by the plaintiffs, it is clear that, the suit properties have jointly stands in the name of husband of the defendant No.1, father of defendant No.2 and 3 by name Rajegowda and plaintiff No.1 and 3 to 5 jointly.

Ex.P.28 demand register shows that item No.9 of suit property Janger No.346 stands in the name of 1st defendant. The plaintiffs have also produced the mutation register marked as Ex.P.29 to 33. On perusing the said mutation register extracts, the suit properties have transferred jointly in the name of husband of defendant No.1 and plaintiff No.1, 3 to 5 herein, after the death of Venkategowda and Rajegowda. The plaintiffs have also produced the RTC extract pertaining to Sy.No.25/3 marked as Ex.P.39. On perusing the same, the said property stands in the name of defendant No.7 who is the purchaser of the suit property. The registered partition deed dated 9.11.1953 Ex.P.6, the RTC extracts, mutation registers, index of lands, demand register produced and marked by the plaintiffs Ex.P.1 to P-41, it clearly shows that, the suit properties have been acquired by the Venkategowda through partition. After his demise, the said properties jointly stands in the name of husband of 1st defendant and plaintiff No.3 to 5 jointly. These documents clearly confirms that, the suit properties are the ancestral and family properties of plaintiffs and defendant No.1 to 4. In spite of service of summons, defendant No.1 to 4 failed to appear the court, they have placed exparte. Hence, there is no contest on the side of the defendant No.1 to 4.

11. The only contention raised by the defendant No.5 who is the son of Helvegowda brother of Venkategowda. In the partition deed dated 9.11.1953 in Sy.No.1/1 out of 5 acres 0-039 guntas equally partitioned between Helvegowda and Venkategowda each have entitled 2.39 acres. In favour of Helvegowda extra 1 acre has been given in the said partition. Thereby, the same has been confirmed by the Asst. Commissioner. As per the partition deed dated 9.11.1953, the khatha has been transferred in the name of Helvegowda and defendant No.1 to 4 herein. In the order it mentioned that, Helvegowda acquired 2.39 acres plus 1 acre in total 3.39 acres in Sy.No.1/1. On careful perusing the RTC extract Ex.P.17 Sy.No.1/1 total extent 6 acres 0-9.8 guntas. Out of said extent as per Ex.P.6 partition deed 2.39½ acres has been given to Venkategowda and 2.39½ acres has been given to Helvegowda. The total extent 5.39 acres, remaining portion is only 0-10.8 guntas. The family of Helvegowda and Venkategowda have only 6 acres 09.8 guntas in Sy.No.1/1. Thereby, they cannot partitioned more than what they have having as on the date of partition deed. Ex.P.10 orders of Asst. Commissioner, it noticed that, the family of the plaintiffs and defendant No.1 to 5 having 6 acres 0-39 guntas in Sy.No.1/1. On perusing the Ex.P.17 RTC, it is clear that, the plaintiffs and defendant No.1 to 5 family having only 6 acres

0-9.8 guntas in Sy.No.1/1. Thereby Helvegowda is not entitled more than what they are having as on the date of partition. No doubt, the partition deed there is a recital that another 1 acre has been given in favour of Helvegowda. However, there is no land in Sy.No.1/1. Thereby, in the partition deed Ex.P.6, it clearly mentioned that, Venkategowda is having half share i.e., 2 acre 0-39 ½ guntas. In the said partition, it clearly mentioned that in Sy.No.1/1 the family of the plaintiffs and defendants having only 5 acres 0-39 guntas. However, in the RTC extracts in Sy.No.1/1, it shows 6 acres 0-11.8 guntas, out of that 0-02 guntas karab, reaming 6 acres 0-9.8 guntas. Thereby, the plaintiffs and defendant No.1 to 4 have entitled 2 acres 0-39 ½ guntas in Sy.No.1/1. The defendant No.5 son of Helvegowda is entitled remaining portion in Sy.No.1/1. Later the learned counsel for the defendant No.5 argued that, the remaining portion in Sy.No.1/1 may be allotted to defendant No.5. However, he has not claimed any partition in this suit.

12. The defendant No.7 who is the subsequent purchaser of suit property, he has contended in his written statement that, he is the bonafide purchaser of the suit schedule property. Defendant No.7 himself examined as DW-2, got marked documents Ex.D.2 to D-9. On perusing the sale deed produced by the defendants Ex.D.2 it is noticed that, DW-2

purchased the Sy.No.25/3 measuring 0-37 guntas i.e., item No.2 of the suit property on 30.1.2013. On perusing the order sheet, the suit summons to defendant No.1 to 4 served, they have called out absent, placed exparte by the order dated 10.12.2012. It is clear that, after service of summons, the defendant No.1 to 4 have sold the suit property in favour of defendant No.7, the same is hit by law of lis-pendency U/s.52 of Transfer of Property Act. The plaintiffs also produced the notice got marked as Ex.P.34, it is clear that, the plaintiffs got issued notice dated 23.1.2013 to defendant No.7 stating that, the partition suit is pending between the plaintiffs and defendants, not to purchase the said property, the said notice duly served to defendant No.7 as per Ex.P.36 postal acknowledgment. It is clear that, the defendant after serving the notice issued by the plaintiffs, he has purchased the suit property. Thereby, the said sale deed is not binding on the share of the plaintiffs. The sale deed is null and void in respect of the share of the plaintiffs. The defendant No.7 also not placed any evidence and documents to show that, there was a legal family necessity of defendant No.1 to 4 to sell the property in favour of defendant No.7. The defendant No.6 remained absent, he is also not taken any contention that, there was a family necessity to sell the suit property. Thereby, the sale deeds dated 17.11.2000 and 30.1.2013

executed by defendant No.1 to 4 in favour of defendant No.6 and 7 are not binding on the share of the plaintiffs. Accordingly, **I answer issue No.1 to 3 in the affirmative, additional issue No.1 in the negative.**

13. **ISSUE No.4 :**

In the light of the above discussion and findings given on issue No.1 to 3 and additional issue No.1 as above, the plaintiffs proved that, suit properties are the ancestral and family properties of the plaintiffs and defendant No.1 to 4. The plaintiffs state that, Venkategowda was married to plaintiff No.1 after the death of 1st wife of Venkategowda. Thereby, the plaintiffs and Rajegowda are the class-I legal heirs of Venkategowda. After the death of Rajegowda defendant No.1 being the wife of Rajegowda, defendant No.2 to 4 are the children of Rajegowda they have entitled the share of Rajegowda. Accordingly, the plaintiff No.1 to 6 are entitled 1/7th share each in the suit properties. The defendant No.1 to 4 together entitled 1/7th share 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 costs.

The plaintiff No.1 to 6 each are entitled 1/7th share over the suit schedule properties. The defendant No.1 to 4 together entitled 1/7th share over the suit schedule properties.

Divide the same by mets and bounds and put them in separate possession of their respective shares.

The sale deeds dated 17.11.2000 and 30.1.2013 executed by the defendant No.1 to 4 in favour of defendant No.6 and 7 are null and void in respect of plaintiffs share.

Office to draw preliminary decree accordingly.

(Dictated to the Stenographer, transcribed by him, corrected by me and then pronounced in the open court on 2nd day of April, 2018)

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

ANNEXURE

LIST OF WITNESSES EXAMINED FOR PLAINTIFF:

PW-1	Nagamma – DISCARDED
PW-2	Puttaramegowda

LIST OF WITNESSES EXAMINED FOR DEFENDANT:

DW-1	Chandregowda
DW-2	Yogesh
DW-3	Rajegowda.M.K.

LIST OF DOCUMENTS MARKED FOR PLAINTIFF:

Ex.P.1	: Record of rights
Ex.P.2	: Index of lands
Ex.P.3	: Genealogical tree
Ex.P.4	: RTC
Ex.P.5	: M.R.Extract
Ex.P-6	: Original Partition deed
Ex.P-7-8	: Certified copies of sale deeds
Ex.P-9-10	: Orders of Asst.Commissioner.
Ex.P-11-13	: Record of rights
Ex.P-14-16	: Index of lands
Ex.P-17-27	: RTC extracts
Ex.P-28	: Demand register extract
Ex.P-29-33	: M.R. Extracts
Ex.P-34	: Notice
Ex.P-35	: Postal receipt
Ex.P-36	: Postal acknowledgment
Ex.P-37	: Notice
Ex.P-38	: Letter of Postal Department
Ex.P-39	: RTC
Ex.P-40-41	: M.R.Extracts

LIST OF DOCUMENTS MARKED FOR DEFENDANT:

Ex.D.1	: Order of Asst.Commissioner
Ex.D.2	: Original sale deed

Ex.D.3 : Mutation register extract
Ex.D.4-6 : RTC extracts
Ex.D.7 : Tax paid receipt
Ex.D.8 : M.R.Extract
Ex.D.9 : R.T.C.

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