

KAMS500001052020



**IN THE COURT OF SENIOR CIVIL JUDGE & JMFC
NANJANGUD**

Present : B. Anupama Lakshmi, B.A., LL.B.,
Senior Civil Judge & J.M.F.C.,
Nanjangud.

Dated this the 6th day of February 2024

O.S./22/2020

Plaintiffs

1. Ningamma W/o late Uddandappa,
aged about 78 years,
2. Shivakshamma W/o late Shankar,
aged about 56 years,
3. Veerabhadra S. S/o late Shankar,
aged about 36 years,
4. Pradhaan S. S/o late Shankar,
aged about 33 years,
5. Basavarajappa S.
S/o late Uddandappa,
aged about 43 years,

All are residing at
Gejjagalli Village,

Kasaba Hobli,
Mysuru Taluk.

6. Rajamma W/o Huchappa
D/o Uddandappa,
Ganiganuru village,
Kuderu Hobli,
Chamarajanagara Taluk & District.
7. Mahadevamma
W/o Shivabasappa
D/o Uddandappa,
Handuvinahalli Village,
Kasaba Hobli,
Nanjangud Taluk.

(By Sri. M.A.Shanmukha, Advocate)

-V/s-

Defendants

1. H.G.Mahadevappa
S/o late Goolappa,
aged about 60 years,
2. Goolappa S/o late Nanjappa,
aged about 66 years,
3. Nanjappa S/o late Nanjappa,
aged about 62 years,
4. Uddandappa S/o late Nanjappa,
aged about 54 years,
5. Appajappa S/o late Nanjappa,
aged about 51 years,

6. Mahadevaswamy S/o late Nanjappa, aged about 48 years, defendants 1 to 6 are residing at Hallikerehundi Village, Chikkaiahnachathra Hobli, Nanjangud Taluk.
7. Devamani D/o late Nanjappa, W/o Doddakoosappa, aged about 58 years, residing at Doora village, Jayapura hobli, Mysuru taluk and district.
8. Gangamani W/o Mahadevappa D/o late Nanjappa, aged about 50 years, residing at Gujjegowdanapura village, Mysuru taluk.
9. Gowramma W/o late Puttamadappa, aged about 73 years,
10. Siddappa S/o late Puttamadappa, aged about 58 years,
11. Jyothi W/o late Shivaraju, aged about 43 years,
12. Yogeesh S/o late Shivaraju, aged about 25 years,
13. Suresh S/o late Shivaraju, aged about 20 years,

14. Shivakumar S/o late Puttamadappa,
aged about 46 years,
15. Rajamani W/o Ramanna,
D/o late Puttamadappa,
aged about 63 years,

Defendants 9 to 15 are
residing at Hallikerehundi village,
Chikkaiahnachathra Hobli,
Nanjangud Taluk.
Defendant No.13 is residing at
Harohalli village,
Jayapura hobli,
Mysuru taluk.

16. Devamma W/o late Devanna,
aged about 60 years,
17. Manjunatha S/o late Devanna,
aged about 40 years,
both are residing at
Hallikerehundi village,
Chikkaiahnachathra Hobli,
Nanjangud Taluk.
18. Rudramma W/o Bhogananjappa,
D/o late Devanna,
aged about 38 years,
residing at Shiramalli village,
Hullahalli hobli,
Nanjangud taluk.
19. Mahadevamma
W/o Mahadevappa,
D/o late Puttamadappa,

aged about 53 years,
residing at Someshwarapura village,
Varuna Hobli,
Mysuru Taluk.

(D1 – Sri. K.R.M., Adv.
D.2 to 6 – Sri.M.J.S., Adv.
D.7, 8, 14, 15, 18 - exparte,
D.9, 11 to 13, 16, 17, – Sri. N.M. Adv.
D.10 & 19 – Sri. C.L.B. Adv.)

ORDERS ON ADDITIONAL ISSUE DATED 06.11.2023

The plaintiffs have instituted the suit for partition and separate possession of their 1/5th share in the suit schedule properties and for other relief.

2. As per the case of the plaintiffs, suit schedule properties are joint family properties and partition has not taken place among the members of the joint family. However, case of the defendant No.4 is that, in respect of the very same suit schedule properties father of the defendant No.1 by name Goolappa had instituted the O.S.20/2000 against the father of present defendants 2 to 6. In the said suit it was decided that the joint family

properties were partitioned in the year 1999. The Hon'ble High Court in R.F.A.No.1158/2006 confirmed the said aspect. But again the plaintiffs have instituted the present suit. Since the matter of partition has already been decided by the Hon'ble High Court this court cannot decide whether partition has been effected or not. That the plaintiffs have to challenge the judgment passed in R.F.A.No.1158/2006 before the proper court and not before this court. Therefore, according to the defendant No.4 the suit is not maintainable.

3. This court has framed the issues and additional issue dated 06.11.2023 is "Whether this court has jurisdiction to try the suit in view of the judgment passed in R.F.A.No.1158/2006 by the Hon'ble High Court of Karnataka?"

4. The defendant No.4 insisted to hear on the said additional issue and pass orders before proceeding with the case.

5. Heard both sides. Perused the pleadings and materials placed on record.

6. The above issue is answered as per the following :-

REASONS

7. The learned counsel for the defendants No.2 to 6 argued that, one Goolappa had instituted O.S.60/2000. Against the said judgment and decree R.F.A.1158/2006 was preferred and the Hon'ble High Court of Karnataka dismissed the said appeal with an observation that the properties were also partitioned among plaintiff No.1 and his brothers. That the plaintiffs were not parties to O.S.No.60/2000 or R.F.A.1158/2006, but the Hon'ble High Court of Karnataka has already observed that the properties have already been partitioned. Since the properties are already partitioned another suit claiming partition cannot be filed. That the plaintiffs have instituted the suit stating that they are the legal representatives of Uddandappa, but the suit is not maintainable. That the

plaintiffs have to challenge the judgment passed in R.F.A.1158/2006 before the proper forum and not before this court.

8. Learned counsel for the plaintiffs argued that, earlier suit was for declaration and not partition. Plaintiffs were not parties to the said suit. In the earlier suit there was only one property. As such the present suit is maintainable.

9. The learned counsel for the defendants has produced copy of the judgment passed in R.F.A.No.1158/2006. A perusal of the said judgment shows that, O.S.No.60/2006 was instituted before this court in respect of property bearing Sy.No.401/2 measuring 3 acres 38 guntas claiming the relief of declaration of title. The Hon'ble High Court of Karnataka observed that, there was a partition between the brothers of plaintiff No.1 and father of the defendants and other two brothers. That there was a partition and all the family

properties were partitioned in the year 1970 itself. No doubt the khatha was transferred in the name of defendant No.1 in the year 1987-88 in terms of M.R.No.10/1987-88 and subsequently on account of partition among them in the year 1994 the khatha was transferred in the name of other two defendants in M.R.No.12/1996-97. The Hon'ble High Court has observed that, there was a partition of all the family properties in the year 1970 itself.

10. On the basis of the said judgment the defendant No.4 is contending that the present suit is not maintainable. However, as observed by the learned counsel for the plaintiffs in the earlier suit only one property was involved and the judgment in R.F.A.No.1158/2006 shows that land bearing Sy.No.201 and Sy.No.197/21 were also included in the partition. In the case on hand, there are some more properties other than the above said properties. Whether the present suit schedule properties were also partitioned or not is not forthcoming from the materials placed on record.

Therefore, the present suit without there being trial cannot be said to be not maintainable at this juncture. Hence, I answer additional issue in the affirmative and this court proceeds to pass the following :

ORDER

The additional issue dated 06.11.2023 is answered in the affirmative.

It is held that this court has jurisdiction to try the suit.

(Dictated to the Stenographer directly on computer, revised, corrected and then pronounced by me in open Court on this the 6th day of February 2024).

(B.Anupama Lakshmi)
Senior Civil Judge, Nanjangud.

**Order pronounced in the open court
(vide separate order)**

ORDER

The additional issue dated 06.11.2023 is answered in the affirmative.

It is held that this court has jurisdiction to try the suit.

Senior Civil Judge, Nanjangud.