

KAMS500003472023



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

Present : **Sri. Kamalaksha D., B.A., LL.B.,**
Senior Civil Judge & J.M.F.C.,
Nanjangud.

Dated this the 1st day of June 2026

O.S./109/2023

Plaintiff : Veena S.N.
D/o late Nanjundaradhya,
W/o Manjunath Aradhya,
aged about 32 years,
residing at #4535,
Neelakanta Nagar,
Gowtham Road,
Nanjangud Town.

Presently residing at
#300, A.E.C.S. Layout,
7th Cross, 5th Stage,
Bengaluru.

(By C.P.Munisuvratha, Adv.)

-V/s-

Defendants 1. Manjula S.N. D/o late
Nanjundaradhya,
W/o Rajanna,
aged about 49 years,
residing at Sathagalli Village,

Near P.H.C. Hanchya,
Mysuru City-570019.

2. Vani S.N. D/o late Nanjundaradhya,
W/o Siddalingaradhya,
aged about 35 years,
residing at S.V.Halli (Varagere Halli),
Chennapatna Taluk,
Chennapatna, Ramanagar.

(By Sri. K.T.Tarakaraman – Adv. for D.1
Sri. S.Venkatesha – Adv. for D.2)

Date of institution of the suit	19.04.2023		
Nature of suit	Partition and separate possession		
Date of commencement of Trial	26.03.2024		
Date on which the judgment was pronounced	01.06.2026		
Duration of suit	Years	Months	Days
	03	01	12

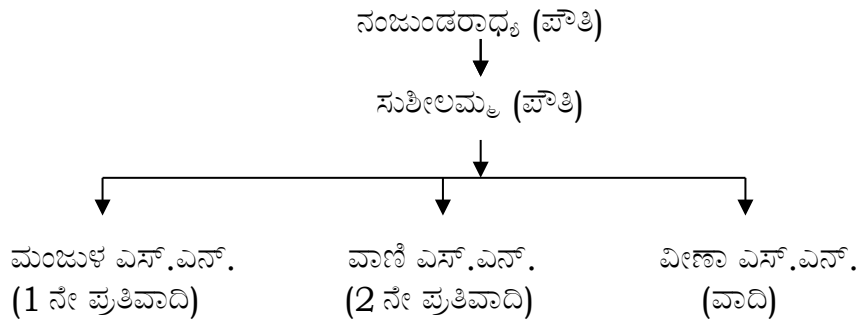
J U D G M E N T

The plaintiff filed the suit for partition and separate possession of her 1/3rd share in the suit schedule properties.

2. Brief facts of the case of the plaintiff are as follows:-

The suit schedule properties bearing Sy.No.367/1A measures 14 guntas, Sy.No.367/1B measures 14 guntas, Sy.No.368/1A measures 13 guntas, Sy.No.368/1B measures 13 guntas, in all 1 acre 14 guntas, Sy.No.76/6 measures 20 guntas, Sy.No.47/1A measures 9 guntas, and House No.4535, 16th Ward Property No.17-508-383 are the ancestral and joint family properties of the plaintiff and defendants. The said properties belonged to Nanjundaradhya, the father of the plaintiff and defendants. The father of the parties died intestate on 21.05.2019 without making partition. The wife of Nanjundaradhya i.e., Susheelamma also died on 03.10.2021. During her period also the suit schedule properties are not partitioned and disposed of. Similarly the parents of the plaintiff and defendants had not executed any testamentary document. After the death of parents of the parties, they inherited the suit schedule properties.

Even after death of parents, the parties have not partitioned the suit schedule properties among them. The plaintiff and defendants are the only legal heirs of their parents and their family pedigree runs as below:



The plaintiff frequently demanding the defendants to make partition of the schedule properties, but the defendants unnecessarily prolonging the process of partition without any legible reason. The defendants have not given share of the crops or income of the suit schedule properties and they always negating and refusing the right of the plaintiff over the suit schedule properties only to engulf all the properties. Items No.1 to 4 are in joint possession of the plaintiff and defendants. Khatha of the property of Sy.No.367/1B and item No.3 is standing in the name of the mother of the plaintiff and defendants. Similarly khatha of

item No.2 standing in the name of father of plaintiff. Recently the defendants colluding with the revenue officials changed the khatha of the schedule properties and now they are making hectic efforts to sell the schedule properties. Hence, this suit.

3. Summons were duly served. Defendants appeared before the court through their respective counsels and filed written statement. The 1st defendant in the written statement denied the every averments of the plaint. It is further explained that, the suit is not properly valued. It is also explained that the marriage of the plaintiff was solemnized during the lifetime of Nanjundaradhya and Susheelamma. The marriage of the 1st defendant was solemnized with one Rajanna who was the brother of the mother of the 1st defendant, after the marriage they lived together in the house of the parents of the 1st defendant. Thereafter in the year 2008 on-wards the 1st defendant started to live separately. Such being the fact, the father of the plaintiff and defendants demised on 21.05.2019. The

husband of the 1st defendant was looking after the welfare of the father of the plaintiff and defendants and he also performed the rituals of Nanjundaradhya. The 1st defendant also looked after the welfare of her mother during her lifetime. The mother of the 1st defendant died on 03.10.2021. A negotiation was held for partition of the suit schedule properties during the lifetime of the mother of the plaintiff and defendants, but the children of Nanjundaradhya and Susheelamma had not arrived conclusion to divide the properties equally. The last rituals of the mother of the 1st defendant was also performed by Rajanna the husband of the 1st defendant by making huge expenditure. Neither the 2nd defendant nor the plaintiff contributed amount for expenditure.

Such being the case, the plaintiff and 1st defendant demanded for partition through their well-wishers i.e., Prabhulingaradhya to make partition of the suit schedule properties on 27.11.2022 and one negotiation was held in the house of the parents of the plaintiff at Nanjanagud. As

per that negotiation, item No.4 property has to be given to 1st defendant and items No. 1 and 3 is decided to give to the 2nd defendant by name S.N.Vani, similarly item No.2 was decided to be given to S.N.Veena i.e., the plaintiff and the children of Nanjundaradhya and Susheelamma have agreed the said proposal and also admitted to make khatha of properties as according to the said negotiation. According to that negotiation the advance amount of the rent on item No.4 property has to be paid by the 1st defendant to the tenant. Item No.4 house was about 40-45 years old house and it was very dilapidated condition. So, the 1st defendant told with the plaintiff and 2nd defendant about the necessity to repair the house of item No.4 property, for which the 2nd defendant and plaintiff consented the 1st defendant to make repair of the dilapidated house. The 1st defendant made huge expenditure of Rs.7 lakhs to make repair of the said house through labourers and contract was given to one Kariyanna S/o Siddappa on 05.12.2022 and one agreement was made between them regarding repair of the house. The husband of the 1st defendant paid bit of amount occasionally

to repair the house and he totally paid Rs. 7 lakh for repair charge of the dilapidated house. After repair of the house, the plaintiff and 2nd defendant prevented the 1st defendant to let out the repaired house for rent. Therefore, the 1st defendant has taken defence in the written statement that as per the negotiation and advise of the well-wishers, the parties have agreed to take shares of the schedule properties and they also agreed to change the khatha of the schedule properties to their names. Only after that oral agreement, the 1st defendant decided and has taken the construction of dilapidated house. She spent amount of Rs.7 lakhs for repair of the house. Hence, she prays to dismiss the suit, otherwise if court come to conclusion about the partition of the schedule properties it is also required to direct the plaintiff and 2nd defendant to pay the share of amount of Rs.7 lakhs, because that quantum of amount was used by the 1st defendant to repair the house. With this condition, the 1st defendant prays to dismiss the suit.

4. The 2nd defendant though filed written statement agreed and consented to divide the suit schedule properties

into 1/3rd share saying that the suit schedule properties are joint family properties and the schedule properties were not divided during the lifetime of their parents and the parties are inherited the suit schedule properties after the death of their parents. Hence, the 2nd defendant consented with the plaintiff to decree the suit.

5. Based on the above pleadings the following issues have been framed:

- 1 Whether the suit is properly valued?
- 2 Whether the court fee paid is sufficient?
- 3 Whether the plaintiff is entitled for partition and separate possession of suit schedule properties?
- 4 Whether the plaintiff is entitled for 1/3rd share in the suit schedule properties?
- 5 Whether the plaintiff is entitled for mesne profits?
- 6 What order or decree?

Addl. Issue:

1. Whether the defendant No.1 proves that the suit schedule properties were already divided before filing of suit?

6. In order to get the relief, the plaintiff is examined as P.W.1 and got marked 32 documents as Exs.P.1 to P.32. On the other hand, the defendant No.2 is examined as D.W.1 and defendant No.1 is examined as D.W.2, but no documents are marked for defendants' side.

7. Heard. Perused the pleadings, evidence and materials placed on record. The answer to the above issues is as follows:

Issues No.1 & 2	:	In the affirmative
Issues No.3 & 4	:	In the affirmative
Issue No.5	:	In the negative
Addl. Issue	:	In the negative
Issue No.6	:	As per final order for the following

REASONS

8. **Issues No.1 & 2** : These issues are taken together for common discussion to avoid repetition. The 1st defendant is only contested defendant and she has taken contention in the written statement that the suit is not properly valued and court fee paid is not sufficient. So, I

referred the valuation slip annexed with the plaint to verify that the suit is properly valued or not. According to the plaintiff the value of the schedule properties is Rs.48,00,000/- and if the suit schedule properties are divided into 1/3rd share, the plaintiff will get the property worth Rs.6,66,687/- and amount of Rs.200/- was paid as court fee as per Section 35 (2) of Karnataka Court Fees and suit Valuation Act. The amount of Rs.200/- is required court fee for partition suit as per Section 35 (2) of Karnataka Court Fees and suit Valuation Act. The 2nd defendant has not explained how the payment of amount of Rs.200/- court fee is meager or less. Therefore, it may be said that the suit of the plaintiff is properly valued as per Section 35 (2) of Karnataka Court Fees and Suit Valuation Act. Hence, **issues No.1 and 2** are answered **in the affirmative**.

9. **Issues No.3 and 4:** These two issues are inter-linked with each other, hence they are taken together for common discussion. The suit is brought for partition and

separate possession of the suit schedule properties. The 1st defendant is only contested defendant and the 2nd defendant is consented with the plaintiff to make partition of the schedule properties. P.W.1 filed chief-examination affidavit. In the cross-examination P.W.1 says that the plaintiff and defendants No.1 and 2 are only the children of their parents and there is no male heirs to their parents. It is suggested to P.W.1 that, only the husband of the 1st defendant Rajanna had performed the last rituals of the parents of the plaintiff and defendants, for which P.W.1 says that all the daughters equally contributed to perform the last rituals of their parents. It is also suggested that one panchayath was conveyed to divide the suit schedule properties, but P.W.1 denies the said suggestion. It is further suggested to P.W.1 that as per negotiation item No.4 house property was given to the 1st defendant, but P.W.1 pleaded her ignorance by denying the such question. It is also suggested to P.W.1 that, the 1st defendant spent Rs.7 lakhs to make repair of item No.4 property, but P.W.1

also denies the same. P.W.1 in the cross-examination admitted as below:

ನಮ್ಮ ತಂದೆ ತಾಯಿ ಮೃತಪಟ್ಟ ನಂತರ ವಿಭಾಗ ಮಾಡಿಕೊಳ್ಳಬೇಕೆಂದು ನಮ್ಮ 3 ಜನರ ನಡುವೆ ಮಾತುಕತೆಯಾಯಿತು ಎಂದರೆ ಸರಿ. ನಾನು ಸಹಕಾರ ಕೊಡದ ಕಾರಣ ವಿಭಾಗ ಆಗಿಲ್ಲ ಎಂದರೆ ಸರಿಯಲ್ಲ. ದಾವಾ ಆಸ್ತಿಯ ಕೆಲವು ದಾಖಲೆಗಳು ನಮ್ಮ ತಂದೆ ತಾಯಿ ಹೆಸರಿನಲ್ಲಿ ಜಂಟಿಯಾಗಿವೆ ಎಂದರೆ ಸರಿ.

10. So, the above referred cross-examination of P.W.1 clearly indicates that one negotiation was conveyed to make partition of the schedule properties, but the said negotiation was not positively resulted because of non-cooperation of the plaintiff, but the said suggestion is denied. Admittedly some of the documents of the suit schedule properties are standing in the names of parents of the plaintiff and defendants. The plaintiff has produced as many as 33 documents. Ex.P.1 is the genealogy sketch and relationship is not denied. Exs.P.2 to 6 are the R.T.Cs. of the schedule properties which are standing in the name of the parents of the plaintiff and defendants. The names of the parents of the plaintiff were got entered in the revenue documents as per M.R.No.H.28/2020-21 means to

say that the schedule properties are ancestral properties in the hands of the father of the plaintiff and defendants. Ex.P.7 is the certified copy of mutation register. Ex.P.8 is the death certificate of mother of the plaintiff, the death is undisputed. Exs.P.9 and 10 are the assessment documents of item No.4 property standing in the name of Manjula, Veena and Vani means the said item No.4 property jointly standing in the name of plaintiff and defendants. Exs.P.11 to 32 are the R.T.Cs. of various years pertaining to the suit schedule properties.

11. The 2nd defendant is examined as D.W.1. In the cross-examination D.W.1 admits that the family sketch produced by the plaintiff with the suit is correct and partition is not effected in the family of the plaintiff and defendants to make partition of the family properties and D.W.1 means the 2nd defendant has consented to make partition of the family properties, because the family properties are yet to be divided according to D.W.1. D.W.2 means the 1st defendant is contested defendant herein. In

the chief-examination D.W.2 says that one negotiation was conveyed to make partition of the family properties of the plaintiff and defendants. According to that panchayath or negotiation, item No.4 property was decided to give this 1st defendant and items No.1 and 3 are to be given to the 2nd defendant and item No.2 property was decided to give to the plaintiff. But the said negotiation was not positively ended, because of non-cooperation of the plaintiff. But the said fact is unproved, because the contested 1st defendant has not proved the same, because if panchayath was really held to make partition of the schedule properties, the person who participated in the panchayath could have been made as witness at the attempt of the contested defendant. The trustworthiness of D.W.2 is questioned in the cross-examination. Admittedly the family sketch and relationship are admitted fact and similarly death of their parents is also undisputed one. According to D.W.2, khatha of item No.1 property was got entered in the name of the 1st defendant after the death of her parents, but the said entry was not made in her name as per any legal

partition, because family partition may be divided and partitioned by way of registered partition deed or court decree. But the contested defendant has not put forth any material evidence to show the earlier partition of family properties either by registration of partition deed or decree by competent court. The defence and contention of the contested 1st defendant that, after negotiation item No.4 house property was decided to give as her share. After that the contested 1st defendant / D.W.2 decided to repair the dilapidated house of item No.4 property and she gave construction house to one contractor by name Kariyanna S/o Siddappa and one agreement was executed in between them on 05.12.2022 to make repair of the said house. But the contested 1st defendant has not produced such agreement to show that the 1st defendant spent amount of Rs.7,00,000/-to make repair of the house. Suppose the contested 1st defendant/ D.W.2 really spent Rs.7 lakhs she would have furnished necessary documents including the alleged agreement, expenditure list etc. The contested defendant No.1 has also not produced any documents like

photographs to prove the pre and post condition of the alleged repair of item No.4 property. D.W.2 finally in the cross-examination has deposed as below:

ದಾವಾ ಆಸ್ತಿಯಲ್ಲಿ ತಂಗಿಯರಿಗೂ ಸಹ ಭಾಗ ಕೊಡಬೇಕಾಗುತ್ತದೆ ಎಂದರೆ ನಾವು ಭಾಗ ಕೊಡುತ್ತೇವೆ ಎಂದು ಯಾವತ್ತೋ ಹೇಳಿದ್ದೇವೆ. ವಿನಾಕಾರಣ ಭಾಗ ಕೊಡದೇ ಕಾಲ ವಿಳಂಬ ಮಾಡಿದ್ದೇವೆ ಎಂದರೆ ಸುಳ್ಳು. ವಾದಿಗೆ ದಾವಾ ಆಸ್ತಿ ಪಿತ್ರಾರ್ಜಿತ ಆಸ್ತಿಯಾದ ಕಾರಣ ವಾದಿಗೆ 1/3 ಭಾಗಾಂಶದ ಹಕ್ಕು ಇದೆ ಎಂದರೆ ಸರಿ.

So, D.W.2 finally admits that the suit schedule properties are the joint family properties and the plaintiff is having 1/3rd share in the schedule properties. Hence, **issues No.3 and 4** are answered **in the affirmative**.

12. **Issue No.5:**The plaintiff also prayed to grant mesne profits. “Mesne” is an old French word that meant “intermediate”. The underlying principle based on which the Code of Civil Procedure, 1908 functions is “Ubi Jus Ibi Remedium” that signifies “where there is a right, there is a remedy” The concept of Mesne Profits has been developed from this principle because it is the law of nature to provide the right to compensation where there has been an

infringement or breach of a legal right. When this claim arises, the law acts as a shield to protect the original owner of the property. Mesne Profits of property has been defined under Section 2 (12) of C.P.C., as those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits, but shall not include profits due to improvements made by the person in wrongful possession. The scope of Mesne Profits is very wide in its own circle. Until now it is clear that Mesne Profits are granted on property but are restricted only to those profits which are derived by a person in wrongful possession of property belonging to another. The possession of the defendants over the suit schedule properties shall not be termed as unlawful possession, because they are also family member of the plaintiff. The defendants are not strangers to the family of the plaintiff. Therefore, their possession over the suit schedule properties cannot be called as unlawful or illegal possession. The question of grant of mesne profits arises

only when possession of the one person is defined illegal or unlawful possession. As discussed above, the possession of the defendants in the suit schedule properties is not illegal or unlawful. Hence, the plaintiff is not entitled to get mesne profits. Therefore, **issue No.5** is answered **in the negative**.

13. **Addl. Issue:** The 1st defendant also taken contention that the schedule properties are already divided long back. According to her, after the death of her parents the plaintiff and 1st defendant met one Prabhulingaradhya the well-wisher of their family and requested to make partition of the schedule properties. The said negotiation is held on 27.11.2022 in their Nanjangud house. According to that negotiation item No.4 property was decided to give to 1st defendant and remaining properties were given to the plaintiff and 2nd defendant, but Prabhulingaradhya has not been examined on behalf of the contested 1st defendant. Suppose the negotiation was really conveyed by Prabhulingaradhya or the said

negotiation was headed by Prabhulingaradhya he would have been examined as witness for the contested 1st defendant. As mentioned above, ancestral and joint family properties may be divided either by registration of partition deed or by decree of court, sometime family properties may be divided by way of oral partition. But in the present matter the division of the family properties prior to filing of suit is not proved, though such contention has been taken by the 1st defendant. Hence, **additional issue** is answered **in the negative**.

14. **Issue No.6:** In view of findings on above issues, this Court proceeds to pass the following:-

ORDER

Suit of the plaintiff is partly decreed. The plaintiff is entitled to get 1/3rd share in suit schedule properties. Suit of the plaintiff for mesne profits is dismissed.

No order as to costs.

Draw preliminary decree accordingly.

In view of the judgment of the Hon'ble Supreme Court reported in 2022 SCC Online SC 737 office to list the matter for taking steps under Order XX Rule 18 of C.P.C. on 17.07.2026.

(Dictated to the Stenographer, transcribed by her on computer, revised, corrected and then pronounced by me in open Court on this the 1st day of June 2026)

(Kamalaksha D.)
Senior Civil Judge, Nanjangud.

ANNEXURE

List of witnesses examined for the plaintiff :-

P.W.1 - Veena S.N.

List of documents marked for the plaintiff :-

Ex.P.1 - Genealogy sketch
Exs.P.2 to 6- R.T.C. extracts
Ex.P.7 - Mutation register extract
Ex.P.8 - Death certificate
Exs.P.9 & 10- Assessment extract of property No.4 and M.R.No.H57/2022-23
Ex.P.11 - Handwritten R.T.C. of Sy.No.367/1A
Ex.P.12 - R.T.C. extract of Sy.No.367/1A
Exs.P.13 to 15- Handwritten R.T.Cs. of Sy.No.367/1B
Ex.P.16 - Computerized R.T.C. extract of Sy.No.367/1B
Exs.P.17 to 19- Handwritten R.T.Cs. of Sy.No.368/1A
Ex.P.20 - R.T.C. extract of Sy.No.368/1A
Exs.P.21 to 24- R.T.Cs. of Sy.No.368/1B
Ex.P.25 - R.T.C. extract of Sy.No.368/1B

Exs.P.26 to 28- R.T.Cs. of Sy.No.76/4
Ex.P.29 - R.T.C. extract of Sy.No.76/4
Exs.P.30 & 31- Handwritten R.T.Cs. of Sy.No.47/1A
Ex.P.32 - Computerized R.T.C. of Sy.No.47/1A

List of witnesses examined for the Defendants :-

D.W.1 - Vani
D.W.2 - Manjula S.N.

List of documents marked for the Defendants:-

Nil

**Senior Civil Judge,
Nanjangud.**