

KAMS500004952017



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

Present : Sri.Ganapathi Prashanth.M, B.A., LL.B.,
Senior Civil Judge & JMFC, Nanjangud

Dated : This the 1st day of April 2022.

O.S.No.83/2017

- Plaintiff/s** :
1. Chikkennamma
W/o Siddaiah @ Madaiah
D/o Masanegowda
Aged about 62 years,
R/at Kempisiddanahundi village
Chikkaiahna Chatra Hobli
Nanjangud Taluk.
 2. Puttathayamma
D/o late. Masanegowda,
Since dead by L.Rs.,
 - 2(a) Girisha
S/o Puttanna
Aged about 32 years
R/at Mosambayanahalli village
Mysore Taluk.
 - 2(b) Bhagya W/o Mahadevu
D/o Puttathayamma
R/at 3rd cross, Halanahalli
Mysore.

3. Doddennamma
W/o late. Javaraji
D/o late. Masanegowda
Aged about 67 years,
R/at Shiramalli village
Hullahalli Hobli
Nanjangud Taluk.
4. Kempamma
W/o Beeregowda
D/o late. Masanegowda,
Aged about 50 years,
R/at Chikkati village
Gundlupet Taluk.
5. Chinnooramma
W/o Siddu
D/o late. Masanegowda,
Aged about 47 years,
All are R/at
Kempisiddanahundi Village,
Chikkaiahna Chatra Hobli,
Nanjangud Taluk.

(Rep. by Sri. Kumar, Adv)

-V/s-

- Defendant/s:**
1. Madegowda @ Konthegowda
S/o Late Masanegowda
Aged about 69 years,
 2. Ramegowda @ Hootagaiah
S/o Late Masanegowda
Aged about 65 years,
- Both are R/at
Kempisiddanahundi Village,
Chikkaiahna Chatra Hobli,
Nanjangud Taluk.

3. Sakamma W/o Mollegowda
D/o Late Masanegowda
Aged about 53 years,
R/at Shiramalli village
Hullahalli Hobli
Nanjangud Taluk.
4. Chikkamasanamma
W/o Chikkamahadevu
S/o Late Masanegowda
Aged about 59 years,
5. Shivamma
W/o Ramegowda @ Hootagaiah
Aged about 55 years,

Both are R/at
Kempisiddanahundi Village,
Chikkaiahna Chatra Hobli,
Nanjangud Taluk.

(D.1, 2, 5 Rep by Sri.M.S.R, Adv.
D.3 & 4 Exparte)

Date of institution of the suit	25.07.2017		
Nature of suit	Partition and Separate Possession		
Date of commencement of Trial	12.12.2018		
Date on which the judgment was pronounced	01.04.2022		
Duration of suit	Year/s	Months	Days
	04	08	06

J U D G M E N T

The plaintiffs have filed this suit seeking the relief of partition and separate possession of 5/9th share in the suit properties.

2. The case of the plaintiffs in brief is as follows:-

The relationship of the parties are as mentioned in the plaint and suit properties are the ancestral and joint family properties. The suit item No.1 was granted to the father of the defendants by the Land Tribunal. The suit item No.2 and 4 are ancestral properties. The suit item No.3 is purchased out of joint family income. The suit item No.5 stands in the name of defendant No.5. The defendant No.2 tried to create khata of suit item No.3 and 5 in the name of his second wife, who is defendant No.5. The defendant No.4 has no right over the suit properties. The defendant No.1 and 2 being sons of the propositus continued to maintain the family and ignored the plaintiffs and hence, the suit and prayed to decree the suit.

3. The defendant No.3 and 4 are placed exparte.

4. The defendant No.1, 2 and 5 appeared before the court and filed written statement inter-alia denying the suit claim. It is further defence that suit properties are in exclusive possession of defendant No.2 and 5 under their absolute ownership. The suit item No.1 was granted to defendant No.2 in LRF No.1762, 4644/74-75 and none else have right thereon. The suit item No.3 is the self acquired property of defendant No.5 of the sale deed dated 31.01.2000, LAC No.2/2016 is registered regarding the land acquisition compensation and defendant No.5 has right to get the said compensation and to avoid it this suit is filed. The plaintiffs are unconnected to the suit properties and prayed to dismiss the suit.

5. On the basis of rival pleadings, the following issues have been framed:

- 1 Whether the plaintiffs prove that the suit schedule properties are ancestral joint family properties of plaintiffs and defendants as alleged ?
- 2 Whether the plaintiffs prove that they are entitled for 5/9th share in the suit properties ?

- 3 Whether the defendant No.1, 2 and 5 prove that suit schedule item No.1, 3, 4 and 5 are their self acquired properties ?
- 4 Whether the plaintiffs are entitled for mesne profits ?
5. Whether the plaintiffs are entitled for the reliefs claimed ?
6. What order or decree?

6. The plaintiff No.1 is examined as PW-1 and got marked Exs.P.1 to 13 and closed plaintiff's side. The defendant No.2 examined as DW-1 and got marked Ex.D1 to 9 and closed his side.

7. Heard the arguments and perused pleading, evidence and materials placed on record.

8. The answers to the above issues are as follows:

- Issues No. 1, 2 & 5 : In the Affirmative
- Issues No.3 : In the Negative
- Issue No.4 : Kept open for consideration
- Issue No.6 : As per the final order for the following:

REASONS

9. **Issues No.1** : It is relevant to note that DW1 has admitted has admitted in the cross examination as follows:

ನನ್ನ ತಂದೆಯ ಹೆಸರು ಮಸಣೇಗೌಡರು ಎಂದರೆನಿಜ. ನನ್ನ ತಾಯಿಯ ಹೆಸರು ಸಿದ್ದಮ್ಮ ಎಂದರೆ ನಿಜ. ನನ್ನ ತಂದೆಗೆ ಇಬ್ಬರು ಮಗಂದಿರು ಹಾಗೂ 7 ಮಂದಿ ಮಗಳಂದಿರು. ಅವರೆಂದರೆ ಚಿಕ್ಕಣ್ಣಮ್ಮ , ಪುಟ್ಟತಾಯಮ್ಮ , ದೊಣ್ಣೆಣ್ಣಮ್ಮ , ಕೆಂಪಮ್ಮ , ಚಿನ್ನೂರಮ್ಮ , ಮಾದೇಗೌಡ ಉಃ ಕುಂತೇಗೌಡ , ರಾಮೇಗೌಡ , ಸಾಕಮ್ಮ , ಚಿಕ್ಕಮಸಣಮ್ಮ ಎಂದರೆ ನಿಜ. 5 ನೇ ಪ್ರತಿವಾದಿ ಶಿವಮ್ಮ ನನ್ನ 2 ನೇ ಪತ್ನಿ ಎಂದರೆ ನಿಜ. ನನ್ನ ಮೊದಲನೇ ಪತ್ನಿಯ ಹೆಸರು ಹಾವಮ್ಮ. ನನ್ನ ಮೊದಲನೇ ಪತ್ನಿಗೆ ಮಕ್ಕಳಿಲ್ಲ ಎಂದರೆ ನಿಜ.

10. Thus the blood relationship between the parties to the suit is admitted fact. Whether the plaintiffs can be considered to be in joint possession and enjoyment of the suit property has to be considered having regard to the undivided right if any possessed by the plaintiffs in respect of suit properties.

11. The defendants claimed that the suit item No.1 is granted to the 2nd defendant in LRF 1762, 4644/74-75

and it is absolute property as per Government grant. The plaintiffs have produced Ex.P12, Form No.7 application copy in LRF 1762 and Ex.P13, Form No.7 application copy in LRF 4644/74-75. The grant order in respect of the said 2 applications are Ex.P9 dated 02/09/1976 and the Ex.P10 order dated 24/09/1979. It is relevant to note that in Ex.P12 the propositor Masanegowda has mentioned the members of the family cultivating the land and unmarried daughters. The said names are 1. Siddamma (45), 2. Ramaiah (28), 3. Beeramma (20), 4. Madaiah (23), 5. Hoovamma (16), 6. Puttathayi (18), 7. Sakamma (8), 8. Kempamma (6), 9. Ramanna (2). Thus, the youngest child was aged 2 years at that time. Masanegowda mentioned the names of his wife and 8 children in Ex.P12 and 13. In the plaint cause title totally 9 children names are mentioned. The said names are admitted by the DW1. Thus, the youngest daughter might not have been born as on the date 31/08/1974 when the Ex.P12 and 13 were filed by the propositors. Both Ex.P12 and 13, Form No.7 application for the grant of occupancy rights were filed by

Masanegowda on same day in respect of the ancestral tenanted lands. In both Ex.P12 and 13 it mentioned by him regarding duration of cultivation as tenant, in the following words:

ಪಿತ್ರಾರ್ಜಿತವಾಗಿ ಗುತ್ತಿಗೆ ಸಾಗುವಳಿಯಿಂದ

12. Therefore, the tenancy was ancestral to Masanegowda. The grant of land in favour of Masanegowda as per Ex.P9 and 10 would therefore, enure to the benefit of the members of the family. As stated supra, the daughters were unmarried at that point of time. The eldest daughter Beeramma was aged 20 years at that point of time. The name of the eldest daughter mentioned in the plaint G-tree is Doddennamma (3rd plaintiff). However, such a name is not mentioned in Ex.P13. Be it as it may, having regard to the admission of DW1 that the propositors had 7 daughters and 2 sons, the said Doddennamma appears to be Beeramma as deposed by PW1. Similarly, the name of Chikkennamma appears to be Hoovamma and name of Chikkamasanamma appears to be Ramamma, their names having been changed when they

were given in marriage, subsequently. Though, the defendants have cross examined the PW1 in this regard, I find no reason to disbelieve this version of plaintiff as the defendants have not come up with any suggestion as to who else are those daughters, if not plaintiffs. The learned counsel for the defendants relied upon the decision reported in ILR 2013 KAR 6202 (Nimbavva Vs. Channaveeraiah) (RFA 4150/2012, dt 26/08/2013, Dharwad bench) wherein the Hon'ble High Court of Karnataka has held that married daughter is excluded in definition of family under Karnataka Land Reforms Act, more particularly u/s 24 of the Act and under such circumstances the daughters are entitled to claim equal share along with brothers but are entitled only for share under notional partition. The said decision is not in dispute. However, the very Exp12 and 13 make it clear that the daughters were unmarried as on the date of filing of Form No.7 and hence, the daughters of Masanegowda were unmarried at that time and all the daughters of Masanegowda will have to be considered as unmarried

daughters for the purpose of Sec.24 of Karnataka Land Reforms Act. Therefore, the grant made in favour of the father would enure to the benefit of the plaintiffs and other daughters of the propositors. Therefore, mere mutation of Khata to the separate names of the sons of Masanegowda will not make any difference as the same is not supported by any mutation order on the basis of any partition among the sons. Therefore, the prohibition under the amended provisions of Hindu Succession Act would favour the plaintiffs, while precluding the plaintiffs from asserting any unregistered partition.

13. The properties that are granted in LRF proceedings as per Ex.P9 are Sy.No.314/B1, 315/B1, 316/B1, totally measuring 1 acre 6 guntas situated at Thoremavu village. The properties granted as per Ex.P10 are 1 acre land in Sy.No.314, 315 & 316 of Thoremavu village. Thus totally 2 acre 6 guntas are granted under Ex.P9 and 10. The RTC extracts of the said lands are Ex.P11, 1 to 5 respectively. They stand in the name of

defendant No.1 and 2 as per LRF grant. The Sy.No.314/1B1 is item No.6 of suit property. The Sy.No.315/1B1 and 315/1B2, 316/1B, 316/1B1, 316/1B2 are item No.1 property. In Ex.P3 RTC reference is made to LRF 20 & 21/80-81. However, it is not the case of the defendant that defendant No.1 and 2 had applied for grant of land. Hence, it can also be considered as the property available for partition at the instance of the plaintiffs.

14. The suit item No.2 is Sy.No. 280/3 measuring 8 guntas. It stands in the name of defendant No.2 Ramegowda as per Ex.P6 RTC. How the defendant No.2 is the absolute owner of the suit property is not specified by them. Hence, when it is not the self acquired property, it is presumed to be joint family property.

15. The Suit item No.3 is Sy.No.281/3 measuring 1 acre. The defendants have produced Ex.D7 registered sale deed dated 28/03/2001. The said document discloses

that the purchaser is Shivamma, the wife of 2nd defendant. The DW1 deposed that his wife purchased the said property out of the amount given from her parental home. However, the DW1 has not produced any document to show that the parents of 5th defendant were very much affluent then that of the family of 2nd defendant and therefore, it is probable that they would gift some property to the 5th defendant by way of providing sale consideration for the purchase of 1 acre of land in the name of 5th defendant. In the name of father of 5th defendant, according to the plaintiff, only 1 acre 11 guntas of land in Sy.No.141/1 situated in Janthagalli village, Varuna hobli, Mysuru taluk is existing and no other land is possessed by him. The DW1 expressed his ignorance in this regard. However, DW1 has not produced any document to show that at the time Ex.D7, the father of the 5th defendant possessed vast properties so as to purchase 1 acre of land in the name of 5th defendant. Moreover, it is admitted by DW1 that the father of the 5th defendant has a son and 2 daughters and no property is purchased in the name of the

siblings of 5th defendant. Therefore, it is highly improbable that even without purchasing any property in the name of son or the other daughter, the father of 5th defendant would purchase 1 acre of land in the name of 5th defendant. The DW1 expressed ignorance that the family of father of 5th defendant possess BPL ration card, but did not deny the said suggestion, which is relevant. Therefore, the probability lies in the fact that out of the nucleus available from out of the granted lands supra, which are wet lands and earning good income, the said 1 acre of land is purchased in the name of 5th defendant. The version of the defendant No.1 and 2 in this regard, i.e., the source of income for the said purchase, is improbabilised from the evidence placed on record. Hence, the said property viz., suit item No.3 property is also available for partition, as it is purchased out of the joint family funds.

The suit item No.7 is Sy.No.314/1B2, which stands in the name of 2nd defendant. The RTC of this property is produced by the plaintiff along with memo dated 28/03/2018, but left unmarked by oversight. Fact

remains that this property available for partition is not specifically denied. Hence, the plaintiff has proved that this property is also joint family property as alleged.

16. The suit item No.5 bearing junjar No.140 is purchased in the name of 5th defendant who is the wife of 2nd defendant. For the reasons stated supra in respect of suit item No.3, the said purchase made under Ex.D9 is also probablised from out of the income of joint family property. Hence, the suit item No.5 is proved to be the joint family property.

17. The suit item No.4 is said to be bearing assessment No.548 and is said to be a house situated at Kempisiddanhundi village. The defendants have not denied its existence and not stated that they don't possess such property. However, plaintiff have not produced any document to prove the existence of such property. Therefore, availability of such property for partition is kept open for partition during final decree proceedings, which if

proved, it would be governed by the same ratio of shares entitled by the parties herein.

18. In view of the above, subject to proof of suit item No.4 available for partition the remaining properties are proved to be joint family properties, Issue No.1 is answered in the affirmative.

19. **Issue No.2:** The plaintiffs have to prove that they are entitled for 5/9th share in the suit properties. As already stated supra propositus and his wife are dead. The couple had 9 children. They are the plaintiff No.1 to 5 and defendants No.1 to 4. Each of them are equally entitled for share as per the decision of Hon'ble Apex Court in *2020 (3) KCCR 1993 (SC) (Vineetha Sharma Vs. Rakesh Sharma)* wherein it is held that daughter will be entitled for equal share on par with sons, irrespective of the date of death of the father. Hence, plaintiffs No.1 to 5 and defendant No.1 to 4 are entitled for 1/9th each share in the suit property. Hence, plaintiffs No.1 to 5 together will

be having 5/9th share in the suit properties. Accordingly issue No.2 is answered in the affirmative.

20. **Issue No.3:** In view of the discussions on the issue No.1, it is clear that the suit item No.1, 3, 4 & 5 are not the self acquired properties of the defendants No.1,2 & 5. The suit item No.4 whether available for partition is kept open for decision during final decree proceedings. The defendants have not produced any documentary proof to prove that the suit item No.4 is their self acquired property. The suit item No.1, 3 and 5 are already held to be joint family properties, while answering issue No.1. Hence, reproducing the same reasons again at this juncture is unnecessary. Accordingly, issue No.3 answered in the negative.

21. **Issue No.4:** This claim for mesne profits is kept open for consideration during final decree proceedings. This issue is answered accordingly.

22. **Issue No.5**: In view of the findings of the above issues, the plaintiffs are entitled for partition and separate possession in suit item No.1 to 3 and 5 to 7 properties. The claim in respect of suit item No.4 is kept open for decision during final decree proceedings. Accordingly issue No.5 is answered partly in the affirmative.

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

ORDER

The suit of the plaintiffs is hereby decreed in part with costs.

It is held that the plaintiffs No.1, 3 to 5 are entitled for 1/9th share each in suit schedule item No. 1 to 3 & 5 to 7 properties. The LRs of 2nd plaintiff together entitled for 1/9th share in the said properties. The defendants No.1 to 4 each are entitled for 1/9th share in the said properties.

The defendant No.5 is not entitled for any share in the said properties.

The claim for share in suit item No.4 is kept open for consideration during final decree proceedings.

The claim for mesne profit is kept open for consideration during final decree proceedings.

The plaintiffs are entitled for partition and separate possession of their respective share in suit item No.1 to 3 and 5 to 7 properties by metes and bounds in accordance with law.

Draw preliminary decree accordingly.

(Dictated to the Stenographer, transcribed by her, corrected, initialed and then pronounced by me in open Court on this the 1st day of April 2022.)

(Ganapathi Prashanth.M)
Senior Civil Judge, Nanjangud

ANNEXURES

List of witnesses examined for the plaintiff/s :-

PW.1 - CHIKKENNAMMA

List of documents marked for the plaintiff/s :-

Ex.P.1 to 7 - RTCs
 Ex.P.8 - Death certificate of Masanegowda
 Ex.P.9 - Certified copy of Orders in LRF No.1762
 Ex.P.10 - Certified copy of Orders in LRF No.4644
 Ex.P.11 - RTC
 Ex.P.12 & 13 - Certified copy of Form No.7.

List of witnesses examined for the Defendant/s :-

DW-1 - Ramegowda @ Hootagaiah

List of documents marked for the Defendant/s :-

- | | | |
|--------------|---|----------------------------|
| Exs.D.1 to 6 | - | RTC extracts |
| Ex.D.7 | - | sale deed dated 28.03.2001 |
| Ex.D.8 | - | Mutation Extract |
| Ex.D.9 | - | sale deed dated 31.01.2000 |

Senior Civil Judge,
Nanjangud

**Judgement pronounced in the
open court, vide separate order**

ORDER

The suit of the plaintiffs is hereby decreed in part with costs. It is held that the plaintiffs No.1, 3 to 5 are entitled for 1/9th share each in suit schedule item No. 1 to 3 & 5 to 7 properties. The LRs of 2nd plaintiff together entitled for 1/9th share in the said properties. The defendants No.1 to 4 each are entitled for 1/9th share in the said properties.

The defendant No.5 is not entitled for any share in the said properties.

The claim for share in suit item No.4 is kept open for consideration during final decree proceedings.

The claim for mesne profit is kept open for consideration during final decree proceedings.

The plaintiffs are entitled for partition and separate possession of their respective share in suit item No.1 to 3 and 5 to 7 properties by metes and bounds in accordance with law.

Draw preliminary decree accordingly.

Senior Civil Judge,
Nanjangud

