

KAMS500033402022



**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 30th day of October 2023

O.S./250/2022

Plaintiffs

1. Nagarathna S. D/o Shettaiah,
aged about 37 years,
2. Shrigowri S. D/o Shettaiah,
aged about 31 years,
3. Sunil S. S/o Shettaiah,
aged about 31 years,

All are residing at
Doddakowlande Village,
Doddakowlande Hobli,
Nanjangud Taluk.

(By Sri.N.Umesha, Adv.)

-V/s-

Defendants

1. Shettaiah - dead
2. Nagaraju S. S/o Shettaiah,
aged about 55 years,

3. Veena D/o Manjula
aged about 25 years,

All are residing at
Doddakowlande Village,
Doddakowlande Hobli,
Nanjangud Taluk.

(D.1 – exparte
Sri. Mahadevaswamy – Adv. for D.2 & 3)

Date of institution of the suit	12.10.2022		
Nature of suit	Partition and Separate Possession		
Date of commencement of Trial	19.07.2023		
Date on which the judgment was pronounced	30.10.2023		
Duration of suit	Year/s 01	Months 00	Days 18

J U D G M E N T

The plaintiffs have instituted the suit seeking the relief of partition and separate possession of their 1/6th share each in the total half share and for mesne profits and for costs and other relief.

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

That the suit schedule properties originally belonged to Sri. Maleyaiah who was in possession and enjoyment of the suit schedule properties during his lifetime. At the first instance the land bearing Sy.No.96 measured 5 acre 19 guntas. The said land was divided between Maleyaiah and his younger brothers, as such each of them was allotted 1 acre 33 guntas each. Thereafter Maleyaiah was in possession and enjoyment of his share of 1 acre 33 guntas. After Durasthu the said land was concluded to 38 ½ guntas and the survey number was poded as 96/3 which is the item No.1 of suit schedule properties. That Maleyaiah had only son by name Shettaiah – the defendant No.1 who along with the plaintiffs and others defendants has been in continuous possession and enjoyment of the suit schedule property after the death of Maleyaiah.

After the death of Maleyaiah and wife of the defendant No.1, the 2nd defendant got the khatha of the suit schedule properties changed into his name illegally without the consent of the plaintiffs and the other defendants. The 2nd defendant has resisted the plaintiffs from entering into the suit schedule properties. In this regard panchayath was convened, but the defendant No.2 did not listen to the words of the panchayathdars. Hence, the suit.

3. After service of suit summons, the defendants 2 and 3 appeared before the court, but did not file written statement. Defendant No.1 did not appear before the court and was placed exparte. During the pendency of the suit defendant No.1 died.

4. The plaintiff No.3 is examined as PW-1 and got marked Exs.P.1 to 10.

5. In view of the above, the following points arise for the consideration of the court.

- 1 Whether the plaintiffs prove that they have got 1/6th share each in total half share of the schedule properties as alleged ?
- 2 Whether the plaintiffs are entitled for mesne profit ?
- 3 What order or decree?

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

7. The answer to the above points is as follows:

- | | |
|------------|---|
| Point No.1 | : in the affirmative |
| Point No.2 | : As per reason |
| Point No.3 | : As per the final order
for the following |

REASONS

8. **Point No.1** : The plaintiffs to prove their case got examined the plaintiff No.3 as P.W.1. He in his affidavit deposed that, suit schedule properties originally belonged to Maleyaiah and after partition among the brothers of Maleyaiah, Maleyaiah had been in possession of his share of property. After the death of Maleyaiah his

only son the defendant No.1 along with his family members has been in continuous possession and enjoyment of item No.1 of suit schedule properties. But the defendant No.2 illegally got the khatha of the suit schedule properties mutated in his name and refused to effect partition.

9. P.W.1 has produced in all 10 documents Exs.P.1 to P.10 which are genealogy tree, R.T.Cs., assessment extract. As per the R.T.Cs. and the assessment extract suit schedule item No.1 property stood in the name of Maleyaiah. Thereafter khatha of the suit item No.1 property stood in the name of defendant No.2. As per Ex.P.9 assessment extract item No.2 house property earlier stood in the name of defendant No.1. Thereafter the property was mutated in the name of defendant No.2. As per Ex.P.10 item No.3 property stands in the name of defendant No.2.

As per genealogy tree Ex.P.1, plaintiffs are the sisters and the brother of the defendant No.2. Defendant No.3 is the grand daughter of defendant No.1. As per the R.T.Cs. and assessment extract, the suit schedule properties belonged to the family of plaintiffs and defendants.

10. To deny the case of the plaintiffs, the defendants in spite of giving sufficient opportunities did not file written statement. Defendant No.2 filed written statement only when the case was posted for judgment. As per catena of decisions, when a matter has been completely heard and evidence has been recorded and posted for judgment, then it should not be reopened for any purpose. Therefore, this court has not considered written statement of defendant No.2. As such, when there is no resistance to the case of the plaintiffs, this court is of the view that suit schedule properties belonged to the plaintiffs and the defendants.

11. That the plaintiffs 1 to 3 and the defendants No.2 and 3 being the L.Rs. of the defendant No.1 are equally entitled for equal share in the suit schedule properties. Since the defendant No.1 has died and plaintiffs and defendants 2 and 3 are his L.Rs., the suit schedule properties have to divided into 5 equal shares and plaintiffs and defendants 2 and 3 are entitled for 1/5th share each in the said properties. Accordingly, point No.1 is answered in the affirmative.

12. **Point No.2 :-** In view of findings on point No.1, the plaintiffs are entitled for the relief of partition and separate possession. As regards mesne profits is concerned, there shall be a separate enquiry in the final decree proceedings. Hence, this point is answered accordingly.

13. **Point No.3:** In view of above findings on the above points, this Court proceeds to pass the following:

ORDER

The suit of the plaintiffs is decreed.

It is declared that plaintiffs and defendants 2 and 3 are entitled for 1/5th share each in the suit schedule properties.

As regards mesne profit is concerned there shall be an enquiry in final decree proceedings.

Parties are directed to bear their own costs.

Draw preliminary decree accordingly.

(Dictated to the Stenographer directly on computer, revised, corrected and then pronounced by me in open Court on this the 30th day of October 2023.)

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

ANNEXURE

List of witnesses examined for the plaintiffs :-

P.W.1 - Sunil S.

List of documents marked for the plaintiffs :-

Ex.P.1	-	Genealogy tree
Exs.P.2 to 5	-	True Copy of R.T.C. extracts
Ex.P.6 & 7	-	True copy of Hand Written R.T.C. extracts
Ex.P.8	-	R.T.C.
Exs.P.9 & 10	-	Copy of assessment extract

List of witnesses examined for the Defendants :-

- Nil -

List of documents marked for the Defendants :-

- Nil -

Senior Civil Judge,
Nanjangud.