

IN THE COURT OF THE PRL.SENIOR CIVIL JUDGE AND CJM
AT RAICHUR

PRESENT: Smt. Hema Pastapur,
B.A. LL.B.
I Addl. Sr. Civil Judge and JMFC, Raichur,
c/c Prl.Sr.Civil Judge and CJM, Raichur.

Dated this the 18th day of September 2021

O.S.No.33/2019

Plaintiffs:-

1. B. Tayamma W/o Late B. Tayanna,

Aged about:- 63 years,

Occupation:- Household,

R/o H.No.3-4-25 and 3-4-26,

Beroon quilla, Raichur,

2. Laxmi Devi D/o Late B. Tayanna,

Aged about:- 28 years,

Occupation:- Household,

R/o H.No.3-4-25 and 3-4-26,

Beroon quilla, Raichur,

3. Maheshwari D/o Late B. Tayanna,

Aged about:- 24 years,

Occupation:- Household,

R/o H.No.3-4-25 and 3-4-26,

Beroon quilla, Raichur.

(By Shri Mallinath S. Hiremath, Advocate)

-vs-

Defendants:- 1. B. Suresh S/o Late B. Tayanna,

Aged about:- 63 years,

Occupation:- Household,

R/o H.No.3-4-25 and 3-4-26,

Beroon quilla, Raichur,

2. The Manager,

Krishna Bhima Samruddhi Bank,

Raichur.

(Defendant No.1 by Shri Yuvaraj G

and defendant No.2 by Shri.

Yadavendra Katti, Advocates)

Nature of the suit

Partition and Separate Possession
and Declaration,

Date of institution of the suit 15.02.2019

Date of commencement 10.01.2020

of evidence

Date of Judgment 18.09.2021

Total duration	Year/s	Month/s	Day/s
	02	07	03

JUDGMENT

That, the plaintiffs have filed the present suit for Partition and Separate Possession and to Declare the registered Mortgage deed document bearing No.4765/2008-09 executed by the defendant No.1 in favour of defendant No.2 as null and void to the extent of their share.

The suit property is as under:-

House property bearing Mpl.No.3-4-23 (o), 3-4-25 (N) and 3-4-24 (o), 3-4-26 (N) adjacent to each other with common boundaries measuring totally $48' + 49' / 2 \times 20' = 970$ sq. ft, situated at Beroon quilla, Raichur.

Brief facts of the present case are as under :-

1. That, one Shri. Tayanna was the husband of the plaintiff No.1 and father of plaintiffs No.2 and 3 and defendant No.1. That, the suit property was originally standing in the name of said Tayanna.

That, the suit property is the ancestral property of the plaintiffs and defendant No.1. That, after the death of said Tayanna the defendant No.1 had got mutated the suit property in his name. That, one Shri. A. Ashokan had availed loan from the defendant No.2 and as a security of said loan amount the defendant No.1 had mortgaged suit property in favour of defendant No.2 and got executed the Registered Mortgage Deed document bearing No.4765/2008-09. That, when the plaintiffs questioned the defendant No.1 about the said Mortgage deed, he remained silent. That, the defendant No.1 is having no right to mortgage the suit property in favour of anybody. That, the plaintiffs being the legal-heirs of deceased Tayanna have got share in the suit property. Hence this suit.

2. That, on suit summons being served, the defendants No.1 to 3 though, have appeared before this Court through their learned counsel but, failed to file their written statement.

3. That, I have heard the arguments and perused the materials placed on record. That, the following points arise for My consideration and determination:-

1. Whether the plaintiffs have proved that, the suit schedule property is the ancestral property of themselves and defendant No.1?

2. Whether the plaintiffs have further proved that, the Mortgage deed executed by the defendant No.1 in favour of defendant No.2 is null and void and not binding on them to the extent of their share?

3. Whether the plaintiffs are entitled for share in the suit property?

4. What order or decree?

4. That, the plaintiffs to substantiate their aforesaid contentions have got examined the plaintiff No.3 as PW1 and got marked the documents at EXs.P1 to 4 and closed their side. That, the defendants have not cross-examined the PW1.

5. That, My answer to the aforesaid points are as under:

Point No.1 :- In the **AFFIRMATIVE**

Point No.2 :- In the **AFFIRMATIVE**

Point No.3 :- In the **AFFIRMATIVE**

Point No.4 :- As per the final order for the following:

REASONS

6. **Points No.1 and 2:-** That, as these points are interlinked, I have taken them for joint discussion to avoid repetition of facts. That, the PW1 in her chief affidavit has reiterated the plaint averments and got marked the documents at EXs.P1 to 4. That, the EX.P1 is the tax paid receipt. That, the EX.P2 is the SAS Form which reveals that the name of defendant No.1 has been mentioned as owner in respect of

suit property. That, the EX.P3 is the certified copy of Demand register pertaining to the suit property bearing No.3-4-24 and 3-4-26 wherein the name of defendant is appearing as owner of the said property. That, the EX.P4 is the certified copy of the Mortgage Deed. That, the recitals of said document reveals that one A. Ashokan S/o T. Alaguvel Raichur had availed loan of Rs.3,50,000/- from the defendant No.2 and as a security of the said loan amount the defendant No.1 had executed the suit property in favour of defendant No.2.

7. It is pertinent to note here that, from the pleadings of plaintiffs and oral and documentary evidence adduced by them it appears that the suit property is ancestral property of themselves and defendant No.1 and till today partition has not taken place amongst them in respect of the suit property. It is to be noted here that, the plaintiffs being the legal heirs of said Tayanna have got the share in the suit property. That, the EX.P4 executed by the defendant No.1 in favour of defendant No.2 is null and void and not binding on the plaintiffs to the extent of their share. It is to be noted here that, the oral and documentary evidence adduced by the plaintiff has remained unchallenged. It is to be noted here that, in the absence of any contra evidence, there is no reason to disbelieve the contentions of the

plaintiffs. Hence, points No.1 and 2 are answered in the **AFFIRMATIVE.**

8. **Point No.3:-** That, as discussed on points No.1 and 2 the plaintiffs are entitled for 3/4th share in the suit property. Accordingly, I answer point No.3 in the **AFFIRMATIVE.**

9. **Point No.4:-** That, as discussed on points No.1 to 3, I proceed to pass the following:-

ORDER

That, the suit of the plaintiff is decreed with costs.

That, the plaintiffs are entitled for 3/4th share in the suit property.

That, the EX.P4 Mortgage deed executed by the defendant No.1 in favour of defendant No.2 is declared as null and void and not binding on the plaintiffs to the extent of their shares.

That, draw the preliminary decree accordingly.

(Directly dictated to the Stenographer on Computer, corrected by me and then pronounced in the open court on this the 18th day of September 2021)

(Hema Pastapur)
I Addl. Senior Civil Judge and JMFC,
Raichur,
c/c Prl.Senior Civil Judge and CJM,
Raichur.

ANNEXURE**List of witnesses examined on behalf of plaintiffs :-**

PW1 : Maheshwari D/o Late B. Tayanna.

List of documents marked on behalf of plaintiffs:

EX.P1 : Tax paid receipt;

EX.P2 : SAS FORM;

EX.P3 : Certified copy of Demand register and

EX.P4 : Certified copy of Mortgage deed.

List of witnesses examined on behalf of defendants:-

-Nil-

List of documents marked on behalf of defendants:-

-Nil-

I Addl. Senior Civil Judge and JMFC,
Raichur,
c/c Prl.Senior Civil Judge and CJM,
Raichur.