

KARC200006702018



[C.R.P. 67]

Govt. of Karnataka

Form No.9 (Civil)
Title Sheet for
Judgment
In suits
(R.P. 91)

TITLE SHEET FOR JUDGMENT IN SUITS

**IN THE COURT OF SENIOR CIVIL JUDGE AND
J.M.F.C. DEVADURGA.
AT: DEVADURGA.**

Dated: On this the 11th Day of October 2022.

Present Before SRI. NAGESH MURTHY B.K.

B.A., L.L.M.

SENIOR CIVIL JUDGE AND J.M.F.C. DEVADURGA.

Original Suit No.108/2018

Plaintiff:

Smt. Suvarna W/o Amaresh M,
Age: 48 years, Occ: Household and Agriculture,
R/o H.No.7-6-297/24, Vasavi Nagar, Raichur,
Taluka and District: Raichur.

(By Sri. S.B.K. Advocate)

-Versus-

Defendants: 1)

Sugappa Jaka S/o Late Channaveerappa Jaka,
Age:73 years, Occ: Agriculture,
R/o H.No.227, Shavantageri village,
Taluka: Devadurga, District: Raichur.

- 2) Chandrakanth S/o Umapathi Bater (Guggal),
Age:65 years,
R/o Chandramouleshwar chowk Raichur,
- 3) Veeresh S/o Sugappa Bale,
Age:50 years, Occ: Advocate,
R/o Near Government Girl School Devadurga,
Taluka: Devadurga, District: Raichur.
- 4) Shivasharana S/o Sugappa,
Age:48 years, Occ: Lecturer in HKES College,
R/o H.No.8-11-200/32, Sumasadan, Near
Satyanarayan Temple, New NGO Colony, Raichur.
- 5) Somashekar S/o Sugappa,
Age:46 years, Occ: Agriculture,
R/o Near Government Girl School Devadurga,
Taluka: Devadurga, District: Raichur.
- 6) Smt. Umadevi W/o Mallikarjun,
Age: 44 years, Occ: Household,
R/o Sirawar village,
Taluka: Sirawar, District: Raichur.
- 7) Meenakshi W/o Basavaraj,
Age: 42 years, Occ: Household,
R/o Sunkeshwarhal village,
Taluka: Devadurga, District: Raichur.
- 8) Smt. Gouramma W/o Chandrashekar,
Age: 40 years, Occ: Household,
R/o Ije village,
Taluka and District: Gadwal (A.P.)
- 9) Smt. Anurad W/o Shivasharana,
Age: 38 years, Occ: Household,
R/o Manavi,
Taluka: Manavi, District: Raichur.
- 10) Shivashankar Shetty S/o Ekambarappa Shetty,
Age: 67 years, Occ: Rtd. Bank Employee
and Advocate,
R/o H.No.7-7-48/2A, Savitri Colony, Raichur,
Taluka and District: Raichur.

- 11) Vishwanath Shetty S/o Ekambarappa Shetty,
Age: 57 years, Occ: Agriculture and Employee in
United India Insurance Co. Ltd.,
R/o Gajagar Pet, Raichur,
Taluka and District: Raichur.
- 12) Smt. Annapurna W/o Somashekar. R. Maka,
Age: 60 years, Occ: Household,
R/o S.V.M. Mansion Flat No.S-2, 3rd main road,
Subbanna Garden, Vijayanagar Bengaluru.
- 13) Basavaraj S/o Sugappa Jaka,
Age: 45 years, Occ: Agriculture,
R/o Shavantageri village,
Taluka: Devadurga, District: Raichur.
- 14) Chandrashekhar S/o Sugappa,
Age: 40 years,
R/o Shavantageri village,
Taluka: Devadurga, District: Raichur.

(Exparte)

Date of filing of the suit	:	12-10-2018
Date of registration of the suit	:	25-10-2018
Nature of the suit	:	Partition and separate possession.
Date of the commencement of evidence	:	20-09-2022
Date of closure of evidence	:	20-09-2022
Date of judgment	:	11-10-2022
Total duration	:	Year/s month/s day/s 03 11 30

(Nagesh Murthy B.K.)
B.A. L.L.M.
Senior Civil Judge and JMFC,
Devadurga.

JUDGMENT

The plaintiff has filed this suit against the defendants for the relief of partition and separate possession by claiming 1/8th share in the plaint A to C schedule properties by metes and bounds and to appoint court commissioner to carry out partition as per decree and for cost of the suit.

II) The brief facts of the case of the plaintiff is as under:

That one Channaveerappa S/o Sugappa Jaka was ancestor of the family of the plaintiff and defendants. The said Channaveerappa married to one Shivamma as his 1st wife who gave birth to a daughter by name Nagamma. After the death of Shivamma the Channaveerappa married to one Ramakka as his 2nd wife, the said Ramakka not give birth to any child accordingly Channaveerappa got married with Basamma as his 3rd wife. The said Basamma gave birth to a son by name Sugappa who is the defendant No.1

and two daughters by name Shivamma and Mallamma. The said Nagamma daughter of Channaveerappa married with one Ekambarappa Shetty. And Nagamma was died in the year 2011 leaving behind two sons by name Shivashankar and Vishwanatha Shetty and two daughters by name Annapurna and Suvarna. The said Suvarna is plaintiff herein. The said Shivamma daughter of Channaveerappa married with one Umapati and died about 4 months back leaving behind her only son Chandrakantha i.e. defendant No.2. Another daughter Mallamma died about 15 years back living behind 3 sons and 4 daughters i.e. defendants No.3 to 10. The defendant No.13 and 14 are the sons of defendant No.1. The said Channaveerappa died in the year 1965 leaving behind the plaintiff and defendants as his successors. The suit properties are belongs to said Channaveerappa. After the death of Channaveerappa his son Sugappa i.e. defendant No.1 acting as kartha of the family. The mother of the plaintiff

died in the year 2011, the suit properties are joint family properties of the plaintiff and defendants. There was difference arose between the plaintiff and defendant No.10 to 14. After the death of Nagamma defendant No.10 used to receive crop share income in the suit properties from defendant No.1 every year. Since the difference arose between the plaintiff and defendant No.10 and 11 they refused to give account in the year 2017 accordingly the plaintiff demanded to effect partition and to allot her share in the suit properties. But the defendants refused to effect partition. Thereafter the plaintiff secured documents, then only came to know that the defendant No.1 illegally mutated the suit properties in the name of defendant No.13 and 14 who are his sons behind the back of the plaintiff. Hence the above suit is filed for partition and separate possession.

III) Subsequent to filing of the suit, inspite of service of

summons against the defendants No.1 to 14 they failed to appear before the court and they were placed exparte. And matter was posted for plaintiff evidence.

IV) The plaintiff examined herself as P.W-1 and got marked documents at Ex.P-1 to Ex.P-8.

V) Heard arguments.

VI) Under the facts and circumstance of the case following points have arise for my consideration.

1. Whether the plaintiff is entitle for 1/8th share in the plaint A to C schedule properties ?
2. Whether the plaintiff is entitle for the relief as sought for in the suit ?
3. What order or decree ?

VII) Perused the materials placed before the court.

VIII) My answer to the above points are as under:

Point No.1 : Partly in the Affirmative.
Point No.2 : Partly in the Affirmative.
Point No.3 : As per final order for the
following,

REASONS

IX) Points No.1 and 2: Since these points are inter-linked, in order to avoid repetition of facts same are taken together for consideration.

In support of the case of the plaintiff, plaintiff has examined himself as P.W-1 by filing affidavit in lieu of examination-in-chief by reiterating entire plaint averments and got marked Ex.P-1 to Ex.P-8. The Ex.P-1 is the khasara phani pertaining to Sy.No.91/AA standing in the name of Channaveerappa, Ex.P-2 is the R.T.C. pertaining to Sy.No.91/1 measuring 18 acre 13 guntas, Ex.P-3 is the Khasara Phani pertaining to Sy.No.108/1, Ex.P-4 are the R.T.C.s pertaining to Sy.No.108/1, Ex.P-5 is the Khasara

phani pertaining to Sy.No.113/1, Ex.P-6 are the R.T.C.s pertaining to Sy.No.113/1, Ex.P-7 and Ex.P-8 are the R.T.C.s pertaining to Sy.No.130/1.

X) It is the specific case of the plaintiff that, one Channaveerappa S/o Sugappa Jaka was ancestor of the family of the plaintiff and defendants. The said Channaveerappa married to one Shivamma as his 1st wife who gave birth to a daughter by name Nagamma. After the death of Shivamma the Channaveerappa married to one Ramakka as his 2nd wife, the said Ramakka not give birth to any child accoringly Channaveerappa got married with Basamma as his 3rd wife. The said Basamma gave birth to a son by name Sugappa who is the defendant No.1 and two daughters by name Shivamma and Mallamma. The said Nagamma daughter of Channaveerappa married with one Ekambarappa Shetty. And Nagamma was died in the year 2011 leaving behind two sons by name Shivashankar and

Vishwanatha Shetty and two daughters by name Annapurna and Suvarna. The said Suvarna is plaintiff herein. The said Shivamma daughter of Channaveerappa married with one Umapati and died about 4 months back leaving behind her only son Chandrakantha i.e. defendant No.2. Another daughter Mallamma died about 15 years back living behind 3 sons and 4 daughters i.e. defendants No.3 to 10. The defendant No.13 and 14 are the sons of defendant No.1. The said Channaveerappa died in the year 1965 leaving behind the plaintiff and defendants as his successors. The suit properties are belongs to said Channaveerappa. After the death of Channaveerappa his son Sugappa i.e. defendant No.1 acting as kartha of the family. The mother of the plaintiff died in the year 2011, the suit properties are joint family properties of the plaintiff and defendants. There was difference arose between the plaintiff and defendant No.10 to 14. After the death of Nagamma defendant No.10 used to receive crop share

income in the suit properties from defendant No.1 every year. Since the difference arose between the plaintiff and defendant No.10 and 11 they refused to give account in the year 2017 accordingly the plaintiff demanded to effect partition and to allot her share in the suit properties. But the defendants refused to effect partition. Thereafter the plaintiff secured documents, then only came to know that the defendant No.1 illegally mutated the suit properties in the name of defendant No.13 and 14 who are his sons behind the back of the plaintiff. Hence the above suit is filed for partition and separate possession.

XI) In this case the defendants are placed exparte thus, the case of the plaintiff remained unchallenged. In this case the plaintiff claiming 1/8th share in the suit A to C schedule properties as she is the daughter of Nagamma and the said Nagamma is the daughter of original prepositor Channaveerappa. The said Channaveerappa

admittedly having daughter through 1st wife Shivamma i.e. Nagamma and through 3rd wife Basamma, the said Channaveerappa had gave birth to a son by name Sugappa who is the defendant No.1 and two daughters Shivamma and Mallamma. Accordingly the said children of Shivamma and Basamma, the properties of the deceased Channaveerappa divided into $\frac{1}{4}^{\text{th}}$ share. And the mother of the plaintiff Nagamma entitle for $\frac{1}{4}^{\text{th}}$ share and the defendant No.1 entitle for $\frac{1}{4}^{\text{th}}$ share and other daughters by name Shivamma and Mallamma entitle for $\frac{1}{4}^{\text{th}}$ share each. And the plaintiff being the daughter of Nagamma who died leaving behind two sons and two daughters entitle for $\frac{1}{16}^{\text{th}}$ share. Thus in view of above said discussion the plaintiff is entitle for $\frac{1}{16}^{\text{th}}$ share in the suit A and B schedule properties and so far as with relating to C schedule properties 200 tolas of gold ornaments and 5 kg silver ornaments no documents are placed before the court, hence the plaintiff is not entitle for partition in the C

schedule properties and the plaintiff is entitle for 1/16th share in the plaint A and B schedule properties. Accordingly I, answered the above point No.1 and 2 partly in the Affirmative.

XII) Point No.3: In the result, I proceed to pass the following:

ORDER

The suit of the plaintiff is hereby partly decreed.

Consequently the plaintiff is entitle for 1/16th share in the suit “A and B” schedule properties.

And not entitle for partition in the suit “C” schedule properties.

Draw preliminary decree accordingly.

(Dictated to the stenographer transcribed, computerized and printout taken by him, corrected and then pronounced by me in the open court on this the 12th day of October, 2022)

(Nagesh Murthy B.K.)
Senior Civil Judge and JMFC,
Devadurga.

ANNEXURES

1. List of witness examined on behalf of plaintiff.

P.W-1: Smt. Suvarna W/o Amaresh M.

2. List of documents marked on behalf of plaintiff.

Ex.P-1	:	Khasara Phani.
Ex.P-2	:	R.T.C.s extracts.
Ex.P-3	:	Khasara Phani.
Ex.P-4	:	R.T.C.s extracts.
Ex.P-5	:	Khasara Phani.
Ex.P-6	:	R.T.C.s extracts.
Ex.P-7 & Ex.P-8	:	R.T.C.s extracts.

3. List of witness examined on behalf of defendants.

-Nil-

4. List of documents marked on behalf of defendants.

-Nil-

(Nagesh Murthy B.K.)
Senior Civil Judge and JMFC,
Devadurga.