

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 12th Day of May 2020.

Present Before SMT. Y.L.LADKHAN
B.A.LL.B (Spl.)
SENIOR CIVIL JUDGE AND
J.M.F.C. DEVADURGA.

Original Suit No.38/2019

Plaintiff: Smt. Virupamma W/o Nagappa,
Age: 60 years, Occ: Agriculture and
household.
R/o Jagatgal village,
Tq: Devadurga, Dist: Raichur.
(By Sri. S.S.P.Advocate)

-Versus-

Defendants:

1. Mallappa S/o Late Mudukappa.
Age: 56 years, Occ: Agriculture.
R/o Govindpalli village,
Tq: Devadurga, Dist: Raichur.
2. Shivappa S/o Late Mudukappa.
Age: 52 years, Occ: Agriculture.
R/o Govindpalli village,
Tq: Devadurga, Dist: Raichur.
3. Smt.Chintamma W/o Basavaraj.
Age: 48 years, Occ: Agriculture and

Household.
R/o Athanur village,
Tq: Manvi, Dist: Raichur.

4. Smt. Mallamma W/o Bhimanna.
Age: 45 years, Occ: Agriculture.
R/o Govindpalli village,
Tq: Devadurga, Dist: Raichur.

5. Hanumantappa S/o Late
Mudukappa.
Age: 42 years, Occ: Agriculture.
R/o Nagoli village,
Tq: Devadurga, Dist: Raichur.
(Exparte)

6. Smt. Akkamma W/o Late
Basavaraj.
Age: 36 years, Occ: Agriculture and
household.

7. Kum. Shivaleela D/o Late Basavaraj
Age: 19 years Occ: Student.

8. Basavaraj S/o Late Basavaraj
Age: 16 years minor student.

9. Kum. Shashikala D/o Late
Basavaraj
Age: 14 years, Occ: Student,

10. Kum. Shivaraja S/o Late Basavaraj
Age: 12 years Minor student,
(D-8 to D-10 minors U/G of their
natural mother Akkamma
Deft. No.6)
All R/o Jagatgal village.
Tq: Devadurga, Dist: Raichur.

(By Sri.H.M. Advocate)

11. Siddappa S/o Late. Mudukappa,
Age: 37 years Occ: Agriculture,
R/o Govindpalli village,
Tq: Devadurga, Dist: Raichur.

(Expate)

Date of institution of the suit	:	16-03-2019
Nature of the suit	:	Partition, separate possession and rectification of records.
Date of the commencement of evidence	:	19-12-2019
Date of closure of evidence	:	02-03-2020
Date of judgment	:	12-05-2020
Total duration	:	Year/s month/s day/s 01 01 26

(Smt. Y.L.Ladkhan)

B.A.LL.B (Spl)

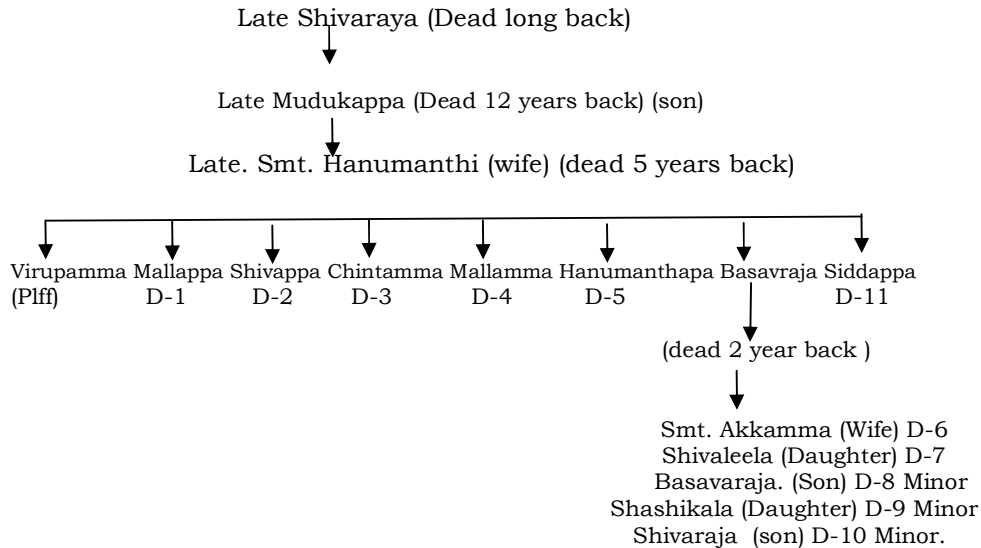
Senior Civil Judge and JMFC,
Devadurga.

JUDGMENT

I) The plaintiff has filed this suit for partition and separate possession of 1/8th share over the suit schedule properties and also consequential relief of permanent injunction against the defendants.

II) The plaint averments are as under:

The plaintiff has pleaded that plaintiff and defendants are members of joint undivided family and their relationship and genealogy of the family is as under:



One Shivaraya was common ancestor of the plaintiff and defendants who dead long back leaving behind his only son by name Mudukappa, who dead about 12 years back leaving behind him his 5 sons and 3 daughters, who are the plaintiff and the defendants of the suit. Amongst the 5 sons, a son by name Basavaraja has died 2 years back leaving behind his wife and 4 children who are defendants No. 6 to 10 of this suit. The plaintiff and defendants are the joint owners and

possessors of the suit schedule properties, till today no partition is effected between them. The suit schedule properties are the agricultural land bearing Sy.No. 15/2/E measuring 01 acres 25 guntas assessed at Rs.4.34 paise situated at Govindapalli village, the agricultural land bearing Sy.No.21/2 measuring 07 acres 05 guntas assessed at Rs.17.25 paise situated at Govindapalli village, the agricultural land bearing Sy.No.25/1 measuring 04 acres 08 guntas including 0.14 guntas (acquired by KBJNL) assessed at Rs.10.00 paise situated at Karadigudda village, the agricultural land bearing Sy.No.25/3 measuring 04 acres 08 guntas (including 0.14 guntas acquired by KBJNL) assessed at Rs.10.00 paise situated at Karadigudda village, the agricultural land bearing Sy.No.37/2 measuring 04 acres 00 guntas assessed at Rs.06.80 paise situated at Govindapalli village, the agricultural land bearing Sy.No.58/2 measuring 07 acres 12 guntas assessed at Rs.08.57 paise situated at Karadigudda village, the agricultural land bearing Sy.No.58/3 measuring 07

acres 12 guntas assessed at Rs.08.57 paise situated at Karadigudda village are the suit schedule properties. The suit schedule property bearing Sy.No.15/2/E measuring 1 acres 25 guntas situated at Govindapalli village originally belonged to one Hanumantha S/o Lingappa, the said land was purchased by Basavaraja who is the husband of defendant No.6 and father defendants No. 7 to 10 out of joint family fund through registered sale deed No.651/2003-04 dated 21-03-2003 in the year 2006 and got M.O.No.Kandaya/N-K Arakera/Hakku.No.4/2006-07 dated 20-2-2006 vide No.M.R.No.03/2005-06 dated 28-3-2006, another suit land bearing Sy.No.21 totally measuring 14 acres 09 guntas (including 0.05 gunas phot Kharab area) situated at Govindapalli village of Devadurga Taluka out of which land to an extant of 7 acres 05 guntas was standing in the name of defendant No.11 Siddappa since from 2002-03 and in the year 2018 it is was renumbered as Sy.No.21/2 vide MR-T-9/2018-19 dated 24-7-2018 and another land bearing Sy.No.25 is totally

measuring 33 acres 25 guntas (including 0.21 gunas phot kharab area) situated at Karadigudda village of Devadurga Taluka. In the year 1994-95 the common ancestor of plaintiff and the defendants by name Mudukappa purchased it in the name of defendants No.1 and 2 from its original owner and got M.O.No.01 dated 17-3-1997 to the extant of 4 acres 08 guntas each i.e. total 8 acres 16 guntas which is renumbered as Sy.No.25/1 totally measuring 25 acres 29 guntas out of which 4 acres 08 guntas in the name of Shivappa i.e. defendant No.2 and Sy.No.25/3 measuring 4 acres 08 guntas was allotted to Mallappa i.e. defendant No. 1. In the above both lands Government acquired the land by KBJNL 0.12 guntas each for canal vide MR.No.T-11/2012-13 Bhoo-Swadhina dated 26-2-2013. Another land bearing Sy.No. 37/2 measuring 04 acres situated at Govindapalli village originally belonged to one Rangappa S/o Rachappa, the father of the plaintiff and defendants namely Mudukappa was cultivating the said land and his name is appearing from the years 1987-88

to 1993-94 as cultivator and in the year the land was purchased by Mudukappa in name of his son Mallappa i.e. defendant No.1 through registered sale deed and mutation was affected vide M.O.No.08/06-1-2000. The suit land bearing Sy.No.58 which is totally measuring 14 acres 24 guntas situated at Karadigudda village of Devadurga belonged to Narasappa, in the year 1990 said Narasappa died, hence name of his son Basavarajappa is mutated and the name of son of his brother by name Basangouda is entered vide M.O. No.01 dated 18-04-1991 and they are renumbered as Sy.No.58/A and 58/AA measuring 7 acres 12 guntas each. The common ancestor of plaintiff and defendants by name Mudukappa had purchased the entire land in the name of his 2 sons i.e. Hanumathappa i.e. defendant No.5 and Basavaraja i.e. the husband of defendant No.6 and father of defendants No. 7 to 10 and mutation was effected vide M.O.No.02 dated 22-02-1996, the said land are renumbered as Sy.No.58/A measuring 7 acres 12 guntas in the name of

Hanumanthappa i.e. the defendant No.5 and Sy.No.58/AA measuring 07 acres 12 guntas in the name of Basavaraja i.e. the husband of defendant No.6 and father of defendants No. 7 to 10. In the year 2015 the brothers of plaintiff by name Mallappa i.e. defendant No.1 Shivappa i.e. defendant No.2, Hanumanthappa i.e. defendant No.5 and Basavaraja i.e. husband of defendant No.6 and father of defendants No. 7 to 10 and Siddappa i.e. defendant No.11 have got partition by relinquishment (Hakku Bidugade) among themselves in respect of the above lands. In respect of Sy.No.58/A totally measuring 7 acres 12 guntas which are standing in the name of Hanumanthappa was bifurcated as under and said Hanumanthappa was allotted 1 acres 11 guntas, said Mallappa was allotted 2 acres 35 guntas, said Shivappa was allotted 02 acres 34 guntas which are renumbered as Sy.No.58/2 and another land bearing Sy.No.58/AA was bifurcated and said Basavaraja was allotted 2 acres 35 guntas, said Hanumanthappa was allotted 1 acres 23 guntas and

said Siddappa was allotted 2 acres 34 guntas respectively and which are renumbered as Sy.No.58/3 and the said mutation is effected vide M.R.No. H-3/2015-16 dated 25-09-2015 which was held behind back of plaintiff and other defendants without their knowledge and consent. The defendants No. 1,2,5 and 11 taking undue advantage of their names appearing in the revenue records claiming that they are the absolute owners and possessors of their respectively land which are standing in their respective names. Plaintiff and her sisters namely defendants No.3 and 4 also have right, interest, share and claim over suit lands. Plaintiff has come to know about the said illegal mutations orders in the month of December-2018 and during sankramana festival on 15-1-2019, when plaintiff visited her parents house demanded her legitimate 1/8th share over the suit schedule properties from the defendants No. 1, 2,5 and 11 who have refused to give any share to her. The defendants No.3 and 4 who are daughters of late Mudukappa have refused to join plaintiff, hence they

are made as defendants. Defendant No.6 is widow of Basavaraja and mother of defendants No.7 to 10 and who also expressed unwillingness to join the plaintiff as she is under mercy of defendants No.1,2,5 and 11, hence they are made as defendants in this suit. The cause of action for the suit arose in month of December-2018 when the plaintiff came to know about the said illegal mutations got by her brothers and finally on 15-1-2019 when defendants refused to give any share to the plaintiff. The market value of the suit schedule properties is valued at Rs.72 Lakhs and the plaintiff has valued her $1/8^{\text{th}}$ share in the suit at Rs. 9 Lakhs and has paid court fees of Rs.200/- Under section 35 (2) and for rectification of ROR of the suit schedule properties Under section 50 of Karnataka court fee and suit valuation Act and has contended that the suit filed by her is well within limitation and this court has got pecuniary jurisdiction to try and entrain the suit, hence the plaintiff has prayed to decree the suit by allotting $1/8^{\text{th}}$ share in the suit schedule properties by metes

and bounds and defendants be restrained permanently from alienating, leasing, mortgaging etc by an order of injunction and also to grant any other reliefs that deem fit.

III) In spite of due service of suit summons defendants No.1 to 11 have remained absent as such were placed *ex parte* on 2-7-2019,

On 23-9-2019 defendants No. 6 to 10 have filed I.A.No.3 under order 9 Rule 7 R/w 151 of C.P.C. which came to be allowed on cost and order dated 2-7-2019 placing *ex parte* of defendants No. 6 to 10 is set-aside.

IV) On 9-10-2019 Shir H.M. Advocate filed power for defendants No. 6 to 10.

Defendant No. 6 filed has written statement and counter claim and defendants No. 7 to 10 have filed memo of adoption to treat the written statement of defendant No.6 as their written statement.

V) The written statement and counter claim of defendants No. 6 to 10 is as under.

These defendants have admitted the family pedigree of plaintiff and defendants as correct and admitted pedigree and these defendants have partly admitted contents of para No. 3 of plaint that suit lands belongs to the joint family properties except the suit land bearing Sy.No.15/2/E measuring 1 acres 25 guntas which was purchased by the husband of defendant No.6 and father of defendants No. 7 to 10 namely Basavaraja, who during his life time, out of his earning and savings. The other suit lands are subject to partition and in those lands these defendants have also got equal $1/8^{\text{th}}$ share and the plaintiff is called upon strict proof of the same. These defendants have admitted that the contents of para No.4 of plaint is partly admitted as true that the suit lands belongs to the ancestors of the plaintiff and defendants except Sy.No.15/2/E measuring 01 acres 25 guntas which was purchased by husband of defendant No.6 and father of

defendants No. 7 to 10 by name Basavaraja, they have also admitted that no division or partition has taken place over the other suit schedule properties which are joint family properties and plaintiff is called upon to strict proof of the same. The contents of para No. 5 of plaint is admitted by them to be true and correct that the common ancestor was Mudukappa during his life time purchased the suit schedule properties except Sy.No.15/2/E in the name his sons out of joint family funds and they have admitted that plaintiff and defendants are the joint owners and possessor of the suit land. The contents of para No.6 of the plaint is also partly admitted to the extent that the suit land bearing Sy.No.58 was purchased out of joint family funds in the year 1990 in the name of Hanumanthappa and Basavaraja but it is within the knowledge and subsequently all 5 brothers have got oral partition among themselves and got mutated the said lands, hence the plaintiff is called upon to strict proof of the same. The contents of para No.7 of plaint is admitted to

be true. The plaintiff and other defendants have got equal right, interest, claim and share over the suit schedule properties except in Sy.No. 15/2/E which is the self acquired property of the husband of defendant No.6 and father of defendants No. 7 to 10. That the suit land bearing Sy.No.15/2/E measuring 1 acres 25 guntas situated at Govindapalli village of Devadurga Taluka which purchased by the husband of defendant No.6 and father of defendants No. 7 to 10 by name Basavaraja as defendant No.6 and her husband had been to Pune for coolie work from 1995 to 2002 and out of their earnings and savings they have purchased the said land through registered sale deed No. 651/2003-04 dated 28-3-2003 before the Sub-Registrar of Devadurga from its original owner Hanumantha S/o Lingappa, hence the plaintiff and other defendants have no right, interest, claim or share over the same as it is the self-acquired property of the husband of defendant No.6 and father defendants No.7 to 10. The plaintiff and other defendants in collusion with others claiming that

the said property as ancestral property as it was nominally purchased is in the name of Basavaraja. The said land is self acquired property of the husband of defendant No.6 and father defendants No.7 to 10, during the life time of said Basavaraja who was cultivating the said land, after his death these defendants have succeeded as the absolute owners and possessor of said suit land. plaintiff and others defendants have denied the share of these defendants over the suit land bearing Sy.No.15/2/E and also refused to effect partition over the other suit lands in which they have got 1/8th share. These defendants have filed counter claim for declaration of the suit land bearing Sy.No.15/2/E which is self acquired property in which plaintiff and other defendants have no right and interests, claim or share and they paid court fee U/sec. 24 (a) and U/sec. 35 (2) of Karnataka court fee and suit valuation Act for the relief of declaration and reification of ROR respectively and has prayed to partly decree the suit of plaintiff and also decree the counter claim of

defendant No.6 by declaring that suit land bearing Sy.No.15/2/E is the self acquired property of husband of defendant No.6 and father of defendants No. 7 to 10 and also grant 1/8th share in the other suit properties by metes and bounds with cost.

VI) On the basis of above pleadings on 25-11-2019 the following issues have been framed as under.

- 1) Whether plaintiff proves that the suit schedule properties are ancestral and joint family properties of plaintiff and defendants ?
- 2) Whether plaintiff proves that she is in joint possession and enjoyment over the suit schedule properties ?
- 3) Whether plaintiff proves that so far no partition is effected between them over the suit schedule properties ?
- 4) Whether plaintiff proves that she has got 1/8th share in the suit schedule properties ?

- 5) Whether plaintiff proves the alleged interference of defendants over the suit schedule properties ?
- 6) Whether defendant No. 6 and defendants No. 7 to 10 proves that suit land bearing Sy.No.15/2/E is the self-acquired property of Basavaraj who was husband of defendant No. 6 and father of defendants No. 7 to 10 ?
- 7) Whether plaintiff entitle for the relief of partition and separate possession of 1/8th share in suit schedule properties as sought for in the plaint ?
- 8) Whether plaintiff entitle for the relief of permanent injunction as sought for in the plaint ?
- 9) Whether defendants No. 6 to 10 entitle for relief of declaration as sought for in the counter claim ?
- 10) What order or decree ?

VII) On 19-12-2019 the plaintiff has examined herself as PW-1 by filing affidavit evidence and got marked 21 documents which are marked as Ex.P.1 to Ex.P.21 and PW-1 is cross examined by the counsel for defendants No. 6 to 10.

The defendant No.6 has examined herself also on behalf of defendants No. 7 to 10 as DW-1 but no documents are got marked on her behalf.

DW-1 is fully cross examined by the counsel for plaintiff.

VIII) I have heard the arguments of learned counsels for plaintiff and defendants No. 6 to 10.

IX) I have perused the materials placed before the court.

X) My answer to the above Issues are as under:

Issue No.1	:	In the Negative.
Issue No.2	:	In the Negative.
Issue No.3	:	In the Negative.

Issue No.4 : In the Negative.
Issue No.5 : In the Negative.
Issue No.6 : In the Negative.
Issue No.7 : In the Negative.
Issue No.8 : In the Negative.
Issue No.9 : In the Negative.
Issue No.10 : As per the final order for
the following.

REASONS

XI) **Issue No.1 to 5,7 and 8:** These issues are interconnected, hence they are taken up together for common discussion and consideration, in order to avoid repetition of facts.

Plaintiff by name Virupamma W/o Nagappa Age : 60 years R/o Jagatagal village of Devadurga Taluka has examined herself as PW-1 by filing affidavit evidence has reiterated the contents of the plaint and in her further examination-in-chief she has produced Ex.P.1 is the RTC extract of suit schedule property bearing Sy.No.15/2/E for the year 2018-19, on perusal of columns No. 9 and 12 name of Basavaraja S/o Mudukappa is appearing as owner and possessor of the

land to an extant of 1 acres 25 guntas and on perusal of column No. 10 it is left blank and there is mention of (ಕೋ.ಅ), on perusal of Ex.P.2 which is the RTC extract of suit schedule property bearing Sy.No.21/* /2 measuring 7 acres 5 guntas for the year 2018-19, on perusal of columns No. 9 and 12 the name of Siddappa S/o Mudukappa appears as owner and possessor and at column No. 10 there is mention of MR T-9/2018-19 dated 24-7-2018 division, on perusal of Ex.P.3 which is the RTC extract of Sy.No.25/* /1 for the year 2018-19 the name of Mallappa S/o Mudukappa appears as owner and possessor to an extant of 3 acres 34 guntas and KBJNL land acquisition to extent of 0.14 guntas and name of Shivappa S/o Mudukappa to an extant of 4 acres 08 appears as owner and possessor and at column No. 10 there is mention of MRT-11/2012-13 dated 26-02-2013 division. The plaintiff has produced Ex.P.4 which is the RTC extract of Sy.No.25 for the year 1993-94 to 1997-98 on perusal of column No. 9, the of name Mallanna S/o Shivaraya, Hanumantha S/o

Shivanna is the deleted and names Shivanna S/o Mallanna, siddramappa S/o Mallanna, Mallappa S/o Mudukappa, Sannashivappa S/o Mudukappa, Siddanna S/o Shivalingappa, Shivanna S/o Hanumanthappa, Mudukanna S/o Mudukappa are appearing as owner and possessor and at columns No. 10 there is mention of patta karidi M.No.8/22-4-1995 and M.No.1/17-3-1997 and M.No.1+2/1-7-1997. The plaintiff has produced Ex.P.5 which is the RTC extract of Sy.No.25/4 for the year 1998-99 to 1999-2000, on perusal of columns No. 9 and 12 the name of Shivappa S/o Mudukappa appears as owner and possessor and at column No.10 it is mentioned as P. The plaintiff has produced Ex.P.6 which is the RTC extract of Sy.No.25/* /3 for the year 2016-17, on perusal of column No. 9 the of names of Mallappa S/o Mudukappa to an extant of 3 acres 34 guntas and KBJNL land acquisition 14 guntas appears as owner and possessor and at column No. 10 it is mentioned as Pattedhar, M.R T-11/2012-13, land acquisition dated 26-2-2013. The

plaintiff has produced Ex.P.7 which is the RTC extract of Sy.No.37/2 /೨೩ for the year 2018-19, on perusal of columns No. 9 and 12 the name of Mallappa S/o Mudukappa appears as owner and possessor to land extant of 4 acres and at column No.10 there is mention of purchase (Kondeddu) M.No.8/6.1.2000. The plaintiff has produced Ex.P.8 which is the RTC extract of Sy.No.37/2/೨೩ for the year 1998-99 to 1999-2000, on perusal of column No.9 the name of Rangappa S/o Rachappa is deleted and the name of Mallappa S/o Mudukappa is entered as owner and possessor and at column No.10 there is mention of purchase (Karidhar) M.No.8/2001 dated 6-1-2001 and also there is prohibition for alienation for the period of 15 years. The plaintiff has produced Ex.P.9 which is the RTC extract of Sy.No.58/A for year 1998-99 to 1999-2000, on perusal of columns No.9 and 12 name of Hanmuanthappa S/o Mudukappa is appearing owner and possessor and at column No.10 it is mentioned as purchaser. The plaintiff has produced Ex.P.10 which is

the RTC extract of Sy.No.58/*/2 for year 2014-15, on perusal of columns No.9 and 12 name of Hanmuanthappa S/o Mudukappa appears as owner and possessor to land extant of 7 acres and at column No.10 there is mention as purchaser, division. The plaintiff has produced Ex.P.11 which is the RTC extract of Sy.No.58/*/2 for year 2018-19, on perusal of columns No.9 and 12 name of Hanmuanthappa S/o Mudukappa appears as owner and possessor to extant of 1 acres 11 guntas, name of Mallappa S/o Mudukappa to extant of 2 acres 35 guntas, name of Shivappa S/o Mudukappa to an extant of 2 acres 34 guntas as owner and possessor and at column No.10 there is mention as purchaser, division, MR.No.H-3/2015-16 dated 25-9-2015 Hakku Bedugade (ಹಕ್ಕು ಬಿಡುಗಡೆ). The plaintiff has produced Ex.P.12 which is the RTC extract of Sy.No.58/*/3, on perusal of columns No.9 and 12 name of Basavaraja S/o Mudukappa appears as owner and possessor to an extant of 7 acres 12 guntas and at column No.10 it is mentioned as

purchase, division. The plaintiff has produced Ex.P.13 which is the RTC extract of Sy.No.58/*/3 for year 2018-19, on perusal of columns No.9 and 12 name of Basvaraja S/o Mudukappa appears to extant of 2 acres 35 guntas at column No.10 it is mentioned as purchase, division, and Hanumantha S/o Mudukappa to an extant of 1 acres 23 guntas and name of Siddappa S/o Mudukappa to an extant of 2 acre 34 guntas and at column No.10 it is mentioned as MR.No.H-4/2015-16 dated 25-9-2015 Hakku Bedugade (ಹಕ್ಕು ಬಿಡುಗಡೆ). The plaintiff has produced Ex.P.14 which is the M.R. No.1799/2002-03 and produced Ex.P.15 which is the M.R.No.1536/2002-03, on perusal of these documents namely Ex.P.14 and Ex.P.15 the said mutation is rejected as per MTN No.29/2002-03 CE No.1799 /03 /2002-03 dated 5-3-2003 and M.N.No.6/2002-03 C.E.No.1536/1461/2002-03 order dated 31-12-2002 respectively. The plaintiff has produced Ex.P.16 which is the M.R.No.H-4/2015-16 and Ex.P.17 is M.R.No.H-3/2015-16, on perusal of this document namely

Ex.P.16 the said Basavaraja S/o Mudukappa has relinquished 1 acres 23 guntas in favour of Hanumantha S/o Mudukappa and Siddappa S/o Mudukappa land to an extent of 2 acres 34 guntas in Sy.No.58/*/3 and Ex.P.17 reveals that Hanumanth S/o Mudukappa has relinquished 2 acres 35 guntas in favour of Mallappa S/o Mudukappa and 2 acres 34 guntas in favour of Shivappa S/o Mudukappa in Sy.No.58/*/2. The plaintiff has produced Ex.P.18 which is M.R.No.1766/2002-03 and Ex.P.19 which is M.R. No.T-8/2018-19 and Ex.P.20 which is M.R. No.3/2005-06 and Ex.P.21 which is Mutation Extract.

PW-1 is fully cross examined but nothing in favour of defendants No.6 to 10 has been extracted from the month of the plaintiff. On perusal of documents namely Ex.P.1 to Ex.P.3, Ex.P.6 to Ex.P.13 which are the RTC extracts of the suit schedule properties as already discussed above. The plaintiff has not produced any documents nor pleaded anything that the said entries in RTC extracts have been challenged before the concerned

revenue authorities. On perusal of Ex.P.1 to Ex.P.3 there is mention that some of the land has been acquired by KBJNL but the said KBJNL is not made as party but who are necessary party to this proceedings. The plaintiff has pleaded and has produced Ex.P.7 contending that suit land bearing Sy.No.37/2/U was purchased by her father and has also pleaded and produced Ex.P.8 that the said property was purchased in the name of defendant No.1 her brother and pleaded and produced Ex.P.9 and Ex.P.10 pertaining to Sy.No.58/A, Sy/No. 58/AA which are purchased in name of defendant No.5 by her father and produced Ex.P.11 which is pertaining to Sy.No.58/2 which was purchased by her father in the name of her brothers i.e. defendants No.1,2 and 5 and produced Ex.P.12 and pleaded that the said property bearing Sy.No.58/2 was purchased by her father in the name of her brother Basvaraja who was the husband of defendant No.6 and father of defendants No. 7 to 10 and has produced Ex.P.13 pertaining to the Sy.No.58/3 which was

purchased in names of her brothers i.e. defendants No.5 and 11 but not produced any documents namely certified copies of the sale deeds nor has any made any attempt to summon those documents before the court. The plaintiff has produced Ex.P.14 to Ex.P.20 which are the mutation register extracts but she has neither pleaded nor produced any documents to show that she has challenged those said documents before the concerned revenue authorities. The said RTC extracts and M.R. extracts which are got marked by the plaintiff has got presumptive value under section 133 of Karnataka Land Revenue Act unless the contrary is proved. The plaintiff has not produced any cogent documents i.e. she has not produced genealogy certificate issued by the competent authority and also oral evidence of any witnesses to prove the suit schedule properties ancestral and joint family properties of plaintiff and defendants. The plaintiff has produced the RTC extracts i.e. Ex.P.1 to Ex.P.13 which are recent documents pertaining to 2018-19, 2015-16,

2014-15 and 1998-99 1999-2000 but plaintiff has not produced any previous or old RTC extracts. It is also well established principles of law that mere entries of names in the revenue records i.e. RTC extracts neither confers nor extinguishes the rights of any person. On perusal of the materials placed before the court reveals that defendants No. 1 to 5 and 11 are placed exparte who are the brothers of in the plaintiff, and defendant No.6 is widow of another brother of plaintiff and defendants No. 7 to 10 are the children of defendant No.6 under these circumstance heavy burden is casted upon the plaintiff that she should prove her case on her own by producing cogent documents regarding with respect to the suit properties i.e. the suit schedule properties are ancestral and joint family properties of plaintiff and defendants. The plaintiff in para No.4 of the plaint has pleaded that Sy.No.15/2/E was purchased by her father through registered sale deed in the name of her brother by name Basavaraja but she has not produced any document nor produced certified

copy of sale deed nor has made any attempt to summon the said document. Also in para No. 5 of plaint she has pleaded that the suit land bearing Sy.No.25 was purchased by her father in the name of her brothers through registered sale deeds but she has not produced the certified copies of the said sale deeds nor made any attempt to summon those documents. In para No. 6 of plaint plaintiff has pleaded that in the year 2015 through relinquishment deed the suit schedule property bearing Sy.No.58 is bifurcated but she has not pleaded that she has challenged the said mutation and plaintiff has also not lead any oral and documentary evidence that she is in joint possession over the suit schedule property. The pleadings of the plaintiff is contrary and destructive as plaintiff at one point of time she pleads that so far no partition by metes and bounds is effected and on the contrary she has produced documents which shows that already division or partition is effected through relinquishment in the year 2015 between her brothers but she not pleaded nor produced

any documents that she has challenged those mutation entries or mutation registers (M.R. extracts). The plaintiff has pleaded that she has got 1/8th share over the suit schedule properties but at Para No.2 of the plaint she has pleaded that about 12 years ago her father has died but no specific date and month and the year of death of her father is mentioned nor she has produced death certificate nor she has got examined any witness nor lead oral evidence in that regard. The plaintiff is claiming equal share of 1/8th share over the suit schedule properties, if section 6 A of Hindu succession Act is to be applicable which has come into effect from 9-9-2005, the plaintiff must specifically plead and also prove by producing cogent documentary evidence but plaintiff has produced Ex.P.1 to Ex.P.3, Ex.P.6 to Ex.P.13, Ex.P.14, Ex.P.20, on perusal of the same the names of defendants appears as owners and possessors and those RTC extracts and M.R. extracts have got presumptive value under section 133 of Karnataka Land Revenue Act unless the contrary is

proved, but plaintiff has not lead any rebuttal evidence. On perusal of Ex.P.1 to Ex.P.3, Ex.P.6 to Ex.P.13 and Ex.P.14 to Ex.P.20, the names of defendants No.1,2,5 and 11 and the husband of defendant No.6 and the father of defendants No. 7 to 10 appears as owner and possessors and those documents have got presumptive value and it is also well established principles of law that no injunction can be granted against owner. The defendants No. 1 to 5 and 11 are placed exparte, hence heavy burden is casted upon the plaintiff to prove her case on her own. The plaintiff who has got examined herself as PW-1 and got marked Ex.P.1 to Ex.P.20 but not lead any cogent documentary evidence nor lead any oral evidence to prove her case and plaintiff has utterly failed to discharge burden casted upon her. Hence issues No. 1 to 5 and 7 and 8 are answered in the Negative.

XII)**Issues No. 6 and 9:** The burden is casted upon defendants No. 6 to 10 to prove that the suit schedule property bearing Sy.No.15/2/E is self-acquired property of the Basavaraja who was the husband of defendant No.6 and father of defendants No. 7 to 10 as their self-acquired property and they are entitle for relief of declaration as absolute owner over the said suit property.

Defendant No.6 by name Smt. Akkamma W/o late Basavaraja age 38 years R/o Jagatagal village is examined herself as DW-1 on behalf of her children i.e. defendants No.7 to 10 as DW-1 by filing affidavit evidence has reiterated the contents of her written statement and counter claim but has not produced any documents. DW-1 is fully cross examined in her cross examination she has denied that the suit schedule property bearing Sy.No.15/2/E measuring 1 acres 25 guntas of land is ancestral the and joint family property of plaintiff and defendants. She has admitted that all the plaintiff and all the defendants have got share in the

suit property and she has admitted that so far no partition is effected over the suit schedule properties but her pleadings reveals that she has plead that already oral partition is effected and mutation entries are also effected. The defendants No. 6 to 10 have specifically pleaded that suit schedule property bearing Sy.No. 15/2/E measuring 1 acres 25 guntas is self-acquired property of her husband and father of defendants No. 7 to 10 respectively but have not produced any documents though they have specifically pleaded that through registered sale deed document No.651/2003-04 dated 28-3-2003 before the Sub-registrar Devadurga it was registered and it was purchased from its previous and original owner by name Hanumantha S/o Lingappa and the said property was purchased from the saving and earnings of said Basavaraja who was the husband of defendant No.6 and father defendants No. 7 to 10 who had gone through Pune for doing coolie work from 1995 to 2002 and out of their earnings and savings the said land was

purchased but the these defendants have neither produced the said original registered sale deed nor produced any certified copy nor have pleaded under whose custody the said document is nor have made any attempt to summon the said document. It is also well established principles of law that the pleadings must be proved either by adducing oral evidence or by producing documentary evidence, in the absence such pleadings has got no evidentiary value in the eye of law. The defendants No. 6 to 10 have just pleaded but not produced any cogent documentary evidence and failed to discharge the burden casted upon them. Hence issues No. 6 and 9 are answered in the Negative.

XV) **Issue No.10:** For reasons as stated and discussed above, I proceed to pass the following:

ORDER

The suit of the plaintiff is hereby dismissed with cost.

The counter claim of defendants No. 6 to 10 is hereby dismissed with cost.

Draw decree accordingly.

(Dictated to the stenographer, transcribed, computerized and printout taken by him, corrected and then pronounced by me through video conference on this the 12th day of May, 2020)

(Smt. Y.L.Ladkhan)
B.A.LL.B (Spl)
Senior Civil Judge and JMFC,
Devadurga.

ANNEXURES

1. List of witnesses examined on behalf of Plaintiff.

PW1. Smt.Virupamma W/o Nagappa.

2. List of documents marked on behalf of Plaintiff.

Ex.P.1 to Ex.P.13 RTC extracts.
Ex.P.14 to Ex.P.20 M.R. extracts.
Ex.P.21 Mutation extract.

3. List of witnesses examined on behalf of defendants.

DW-1 Smt. Akkamma W/o Late. Basavaraja.

4. List of documents marked on behalf of defendants.

Nil

(Smt. Y.L.Ladkhan)
B.A.LL.B (Spl)
Senior Civil Judge and JMFC,
Devadurga.

