

**IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC.,
AT LINGASUGUR**

Present :- SRI. LAKSHMIKANTH JANAKIRAM MISKIN, M.A., LL.M
Senior Civil Judge & J.M.F.C.
Lingasugur.

O. S. No. 44/2016

Dated: 02nd day of July 2018

- PLAINTIFFS:** - 1. Nagamma D/o Shivappa,
Age: 25 years, Occ: Household,
R/o Medinapur village, Tq. Lingasugur
2. Yankamma W/o Shivappa
Age: 55 years, Occ: Household,
R/o Medinapur village, Tq. Lingasugur
Dist. Raichur
- (Represented by: Sri. A.A.G., Advocate)

- Vs -

- DEFENDANTS:-** 1. Shivappa S/o Balappa,
Age: 60 years, Occ: Agri.,
R/o Medinapur village, Tq. Lingasugur,
Dist. Raichur.
2. Gundamma W/o Amaragundappa
Age: 35 years, Occ: Household
R/o Medinapur village, Tq. Lingasugur,
Dist. Raichur.
3. Shilavanthi W/o Chandappa
Age: 33 years, Occ: Household
R/o Medinapur village, Tq. Lingasugur,
Dist. Raichur.
4. Earamma W/o Gundappa
Age: 31 years, Occ: Household,
R/o Medinapur village, Tq. Lingasugur,
Dist. Raichur.

5. Basamma W/o Duragesha @ Duragappa
Age: 28 years, Occ: Household
R/o Medinapur village, Tq. Lingasugur,
Dist. Raichur.
6. Veeresh S/o Duragesh @ Duragappa
Age: 09 years, Minor
7. Balaraja S/o Duragesh @ Duragappa,
Age: 07 years, Minor
8. Mahalakshmi D/o Duragesh @ Duragappa
Age: 05 years, Minor
9. Huligemma D/o Duragesh @ Duragappa
Age: 03 years, Minor

Defendant No.6 to 9 being minors under the guardianship of their natural mother defendant No.5.

10. Huligemma W/o Mounesha,
Age: 27 years, Occ: Household,
R/o Medinapur village, Tq. Lingasugur,
Dist. Raichur.
11. Bannemma W/o Venkatesh,
Age: 23 years, Occ: Household,
R/o Medinapur village, Tq. Lingasugur,
Dist. Raichur.
12. General Manager,
Hutti Gold Mines Company Limited,
Hutti, Tq. Lingasugur.

(D1 represented by : Sri. S.K.K., Advocate)
(D2 to D4, D10 and D11 are placed Exparte)
(D5 represented by: Sri. M.S., Advocate)
(D6 to D9 represented by : Sri. V.M., Advocate)
(D12 represented by: Sri. Raj., Advocate)

Date of Institution of the suit : 08-09-2016
Nature of the suit : Partition and Separate Possession,
Declaration and rectification of
revenue records.

Date of the commencement
of recording of evidence : 21-02-2018

Date on which the Judgment
is pronounced : 02-07-2018

Total duration : Year/s Month/s Day/s
01 09 24

J U D G M E N T

This suit is filed by the plaintiffs, for the relief of partition and separate possession, declaration and rectification of revenue records by metes and bounds and cost of the suit.

2. **The plaint in brief:-** The plaintiffs filed this against the defendants for partition and separate possession, declaration and permanent injunction in respect of suit schedule properties item No.1 to 5 i.e., Sy.No.695 Hissa 1, total measuring 12 acres, in which 04 acres situates at Kota village, Sy.No. 695 Hissa 2, total measuring 07 acres 05 guntas in which 03 acres situated at Kota village, Sy.No.99 Hissa 2, measuring 04 acres 22 guntas situates at Guntagol village, House No.389/89 situates at Medinapur village and old house open plot its property No.53/51 situates at Guntagol village.

3. As per say of the plaintiffs the defendant No.1 is father of plaintiff No.1 and husband of plaintiff No.2, defendant No.2 to 4, 10 and 11 are sisters of the plaintiff No.1. The defendant No.5 is the wife of her elder brother by name deceased Durgesh. The defendant No.6 to 9 are the children of the defendant No.5. The defendant No.12 is the General Manager of H.G.M. Company, Hutti village. Further, plaintiffs contended that they are the members of joint family and their family constitute as an undivided family. The suit properties are purchased in the Medinapur and Kota village from the benefit of Guntagol properties, hence the suit schedule properties are ancestral and undivided joint family properties. Hence, plaintiffs and defendants are having equal shares in the suit schedule properties. Further the plaintiffs contended that the defendant No.5 was not taken care of her husband when he was bed ridden due to disease, hence deceased Durgesh who is husband of defendant No.5 has assured to entitle all his death benefits to the plaintiff No.1 as she has taken his care. In the present suit the cause of action arose on 28-07-2016, when the plaintiffs approached the defendant No.1 and 5 to get her share in the suit schedule properties and same has denied by them. Therefore, the plaintiffs are constrained to file the suit.

4. In pursuance of notice the defendants have appeared through their counsel and filed written statement. The defendant No.2 to 4, defendant No.10 and defendant No.11 are placed Exparte.

5. **The brief facts to written statements filed by the Defendant**

No.1 and 5:- The defendant No.1 and 5 filed their written statement denying the entire averments made in the plaint. In addition they contended that the suit properties of item No.1 to 5 are purchased by the defendant No.5's husband from his own earning, hence, the plaintiffs are not having any rights to entitled their shares in the suit schedule properties. They also contended that the plaintiffs and defendants are not constitute as undivided and joint family members. Hence, the suit filed by the plaintiffs is not maintainable in the eye of law and on facts it is fit to be dismissed. Accordingly, the defendants pray for dismiss the suit with costs.

6. **The brief facts to written statements filed by the Defendant**

No.12:- The defendant No.12 filed his written statement denying the entire averments made in the plaint. The allegations of the plaint except expressly admitted herein are false, frivolous, vexatious and baseless and

as such they are denied. The defendant No.1 is the father of the plaintiff No.1 and other defendants. The plaintiff No.2 is the wife of the defendant No.1. Therefore, the plaintiff No.2 being wife gets the right in the property by virtue of succession after the death of the defendant No.1. The defendant No.2 to 11 also acquired the suit properties by virtue of succession after the death of the defendant No.1. Therefore, suit itself is not maintainable in law and the plaintiffs have got no right to claim the share against the living defendant No.1. Therefore, the suit is liable to be dismissed. The relationship of the plaintiffs with the other defendants are not known to the defendant No.12. But the deceased Durgappa S/o Shivappa i.e., the son of the defendant No.1 was the employee of the H.G.M., company and he died while in service. This defendant is unaware of the family pedigree of the plaintiffs and other defendants and also is unaware of the fact of the Hindu joint family and the suit properties are joint family properties. Moreover, the defendant No.3 is also unaware of the allegations of acquisition of the property at Medinapur. Therefore, the plaintiffs are put to prove the same. The plaintiff No.1 is not eligible to get the job on compassionate ground as she does not fall under the definition of the family of deceased Durgappa. Any assurance if at all made by the deceased Durgappa is not binding on this defendant as the law does permit the same. The tendency of the people residing at Hutti

and in the surrounding villages are eager to acquire the job of the company in one way or the other and when the company allowed the person to have the job who have lost their lands for the company, the people have started file the false suits by impleading the company as one of the defendants and they would like to get entered from the back door. Therefore, such tendency has to be curbed. There is no cause of action arose to the plaintiffs against this defendant. Therefore, the suit is bad in law for mis-joinder of the party. Hence, defendant No.12 pray for dismissal of the suit.

7. On the basis of above pleadings this court framed the following issues:-

ISSUES

1. Whether the plaintiffs prove that suit properties are joint family properties of themselves and defendant No.1 to 11?
2. Whether the plaintiff No.1 is entitled for compensatory job from Hutti Gold Mines Company excluding the defendant No.5?
3. Whether the plaintiffs prove that the plaintiff No.2 is entitled for share in death benefits of her son Duragappa?
4. Whether the plaintiffs are entitled for relief as prayed for?
5. What Order or Decree?

8. To substantiate her claim the plaintiff No.1 examined as Pw-1 and all documents produced by the plaintiff marked as Ex.P1 to Ex.P4. The defendants side not adduced evidence and case posted for arguments.

9. Heard arguments on both sides. My answer to the above issues is as follows:

Issue No.1 : In the Affirmative

Issue No.2 : In the Negative

Issue No.3 : In the Negative

Issue No.4 : In the Partly affirmative

Issue No.5 : As per final Order for the following:

REASONS.

10. **ISSUE No.1:-** Pw-1 Nagamma in her chief examination she has reiterated the averments of the plaint. In her cross examination the counsel for the defendants did not cross examination of the Pw-1 as the defendant No.1 stated before the court that there is no any objections to pass the decree in favour of the plaintiff.

11. In the present suit, the defendant No.1 and the defendant No.5 have filed their written statement denying the averments made in the plaint, but the defendant No.1 and the defendant No.5 have not produced any material to prove the fact that the suit - lands are not the

joint and ancestral properties of the parties to the suit. The defendant No.1 and the defendant No.5 have denied but there is no rebuttal evidence to prove the fact that the suit - lands are not the joint and ancestral properties of the parties. On the contrary the suit - lands standing in the name of the defendant No.1, except that of land Survey No. 695/1 measuring four acres situated at village Kotha Taluka Lingasuguru as per Record of rights in respect of land in respect of the said suit - land as per Exhibit- P.2.

12. All properties inherited by a male Hindu from his father, father's father or father's paternal grandfather, is 'ancestral property'. A person may possess ancestral property as well as his self acquired property, it is permissible for a coparcener to blend his self acquired property with that of the ancestral or joint family property. A property acquired with the aid of the joint family property also becomes joint family property. The person acquiring a property if has command over sufficient joint family property, with the aid of which the new property could be acquired, there is a presumption that the acquired property belongs to the joint family. In such a case, the acquirer has to show that his acquisition was without the aid of any joint family assets. However the initial burden is on the person who asserts, that the newly acquired asset is of the joint family to prove,

that the acquirer had command over sufficient joint family assets with the aid of which he could have acquired the new asset. Proof of the existence of a joint family does not lead to the presumption that property held by any member of the family is joint, and the burden rests upon anyone asserting that any item of property is joint to establish the fact.

13. As discussed above, the defendant No.1 and the defendant No.5 have except denying that the suit - lands are not the joint and ancestral properties they have not produced any materials to prove the fact that the suit - lands are not the joint and ancestral properties . Thus, in the considered opinion of this court, the suit - lands are the joint and ancestral properties of the parties to the suit thus, the plaintiffs are entitled for shares over the suit - lands. It is made clear that mere denial is not the denial at all unless the pleadings in the written statement are corroborated by the documentary evidence . Thus, in the considered opinion of this court, the suit - lands are the joint and ancestral properties of the parties to the suit and the plaintiffs are entitled for share over the suit - lands. Hence, issue No.1 answered in affirmative.

14. **ISSUE NO.2:-**The plaintiff has sought for compensatory job at Hutti Gold Mines Company Limited, at Hutti, Taluka Lingasuguru,

District Raichur, for the defendant No.5 , the wife of deceased Durguappa. Directing the defendant No.12, the General Manager Hutti Gold Mines Company Limited, at Hutti, Taluka Lingasuguru, District Raichur, to appoint the defendant No.5 on compensatory grounds. In the plaint the plaintiffs have sought that the plaintiff No.1 is entitled for the relief of compensatory job at Hutti Gold Mines Company Limited, at Hutti, Taluka Lingasuguru, District Raichur stating that deceased Durgappa during his lifetime orally consented in favor of the plaintiff No.1 , to take the compensatory job at Hutti Gold Mines Company Limited, at Hutti, Taluka Lingasuguru, District Raichur, after his death. But at prayer column, the plaintiff has sought for relief of seeking directions to the defendant No.12, the General Manager, Hutti Gold Company Limited, at Hutti, Taluka Lingasuguru to consider the candidature of the defendant No.5 , the wife of the deceased Durgappa. This Court failed to understand as to how this relief could be sought for by the plaintiff . The defendant No.5, the wife of the Deputy Commissioner Durgappa who was an employee at Hutti Gold Mines Company Limited, at Hutti, Taluka Lingasuguru, District Raichur, , to proceed to get the compensatory job there by taking legal course known to law. This Court failed to understand as to how the plaintiff can seek relief in favor of the defendant No.5 the wife of the deceased Durgappa

seeking directions to General Manager, Hutti Gold Company Limited, at Hutti, Taluka Lingasuguru to consider the candidature of the defendant No.5 the wife of the deceased Durgappa. Therefore, in the considered opinion of this court, it is for the wife of the deceased Durgappa the defendant No.5, to approach the General Manager, Hutti Gold Company Limited, at Hutti, Taluka Lingasuguru seeking compensatory job at Hutti Gold Mines Company Limited, at Hutti, Taluka Lingasuguru, District Raichur. This Court cannot direct the General Manager, Hutti Gold Company Limited, at Hutti, Taluka Lingasuguru to consider the candidature. It is only if the General Manager, Hutti Gold Company Limited, at Hutti, Taluka Lingasuguru if rejects the claim of the defendant No.5, Basamma, the wife of deceased Durgappa then the defendant No.5 can take legal course known to law. It is unknown to law to direct the General Manager, Hutti Gold Company Limited, at Hutti, Taluka Lingasuguru to consider the claim of the defendant No.5, Basamma, the wife of deceased Durgappa for compensatory job at Hutti Gold Mines Company Limited, at Hutti, Taluka Lingasuguru, District Raichur. Hence issue No.2 answered in negative.

15. **ISSUE NO.3:-** As per Section 8 of The Hindu Succession Act, 1956, the mother of the deceased Durgappa the husband of the defendant No.5 Basamma, cannot alone become the class one heir. The children of deceased Durgappa the husband of the defendant No.5 Basamma, as well the defendant No.5 herself also become the class one heir along with the plaintiff No.2, Yankamma who is the mother of the deceased Durgappa the husband of the defendant No.5 Basamma. Thus, in the considered opinion of this court, taking into consideration of Section 8 of the The Hindu Succession Act, 1956, the defendant No.5, Basamma, and the defendant No.6 to defendant No.9, who are the minor children of deceased Durgappa the husband of the defendant No.5 Basamma are also the class one heir along with plaintiff No.2 Yankamma who is the mother of the deceased Durgappa who was employee at Hutti Gold Mines Company Limited, at Hutti, Taluka Lingasuguru, District Raichur. Thus, in the considered opinion of this court, the case of the plaintiff that she alone is entitled for all service benefits of deceased Durgappa the husband of the defendant No.5 Basamma, excluding the defendant No.5 to defendant No.9 who are the wife and minor children of deceased Durgappa cannot be considered. Hence Issue 3 is answered in negative.

16. **ISSUE NO.4:-**This Court already held while answering issue No.1 that the plaintiffs are entitled for an equal share over the suit - lands but the plaintiffs are not entitled for service benefits of the deceased Durgappa the husband of the defendant No.5 Basamma and compassionate job at Hutti Gold Mines Company Limited, at Hutti, Taluka Lingasuguru, District Raichur. Thus, the plaintiffs are entitled for equal shares over the suit - lands alone and they are not entitled exclusive rights over the service benefits and compassionate appointment at Hutti Gold Mines Company Limited, at Hutti, Taluka Lingasuguru, District Raichur, . Hence Issue No.4 answered in partly affirmative.

17. **ISSUE No.5:-** Foregoing reasons and answering above issues I proceed to pass the following;-

ORDER

Suit of the plaintiffs is partly decreed.

It is held that the plaintiff No.1 is entitled for 1/8th share over the suit lands.

Further defendant No.2 to 4, defendant No.10 and defendant No.11 are entitled for 1/8th share over the suit lands.

The defendant No.5 to defendant No.9 are
together entitled for 1/8th share over the suit lands.

(Dictated to the Stenographer directly on computer, computerized by him and
corrected and then pronounced by me in open court on 02nd day of July 2018)

Sd/-

(Lakshmikanth J Miskin)
Senior Civil Judge & JMFC.,
Lingasugur.

ANNEXURE

1. List of witnesses examined on behalf of plaintiff.

PW-1 : Nagamma D/o Shivappa

2. List of documents marked on behalf of plaintiffs.

Ex.P1 to 3 : RTC extracts

Ex.P4 : Salary certificate belongs to Duragappa

3. List of witnesses examined on behalf of defendants:

--- NIL ---

4. List of documents marked on behalf of defendants:

--- NIL ---

Sd/-

(Lakshmikanth J Miskin)
Senior Civil Judge & JMFC.,
Lingasugur.