



**IN THE COURT OF ADDITIONAL CIVIL JUDGE & JMFC,
LINGASUGUR**

**PRESENT; Sri. AMBANNA. K. B.Com, L.L.B. [Spl.]
CIVIL JUDGE & JMFC, LINGASUGUR.
Dated this 7th day of August, 2024.
O.S.No.150/2023**

Between:

1. **Smt. Loordamma W/o. Arogyappa**, Age:58 years,
Occ: Household & Agri., R/o.
K.Mariyammanahalli village,
Tq:Lingasugur, Dist:Raichur.

...Plaintiff

(By Sri. A.K.R., Advocate)

And:

1. **Arogyappa S/o. Balappa Gajjalar**, Age:55 years,
Occ:Agriculture, R/o.
K.Mariyammanahalli village,
Tq:Lingasugur, Dist:Raichur.

... Defendant

(Exparte)

Date of institution of suit	06.10.2023
Nature of the suit	Partition and separate possession
Date of recording of evidence	04.07.2024
Date of which judgment pronounced	07.08.2024
Duration of the suit	Year/s month/s day/s. 00 10 01

**C/C. Addl.Prl.,Civil Judge & J.M.F.C.
Lingasugur**



JUDGMENT

This the suit filed by the plaintiff against the defendant for decree of partition and separate possession of in respect of suit schedule property and for such other reliefs.

2. Brief facts of the case, as stated in the plaint for the disposal of the suit are as follows:

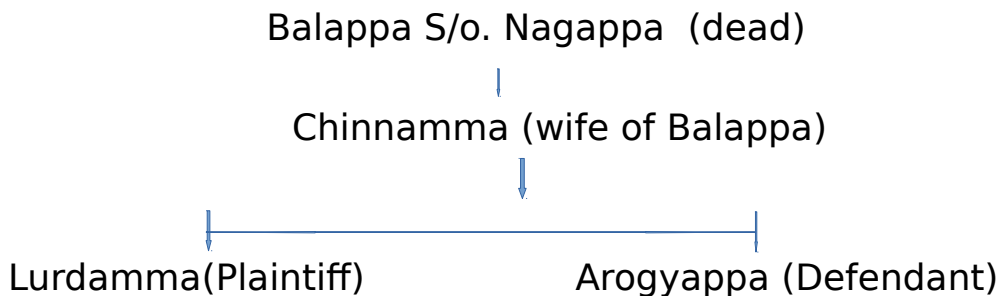
It is submitted that the plaintiff and defendant are real sister and brother. The suit schedule property is an agricultural land bearing Sy. No.52/* Hissa 1 measuring 6 acres 14 guntas Janthapura village, Mudgal Hobli, Lingasugur Taluk in the following boundaries:

East-	The land of J.Nagappa.
West-	The land of Gangppa.
South-	The land of Devdas.
North-	The land of Mallappa Bhahikatti

4. Further it is submitted that the plaintiff and defendant are the children of one Balappa S/o. Nagappa and Chinnamma W/o. Balappa. The said Balappa is the original propitious family of the plaintiff and defendant. The said Balappa died about 20 years back and Chinnamma died about 8 years back by leaving behind



plaintiff and defendant are their legal heirs. The family pedigree of the plaintiff and defendant is set out as here under:



5. It is submitted that the plaintiff and defendant are constituted Hindu Joint Family. One Balappa died leaving behind plaintiff and defendant as his legal heirs. As on date of death, there was no partition in between the plaintiff and defendant. The defendant is the brother of of the plaintiff. The suit property mutated in the name of defendant by name Arogyappa S/o. Balappa behind back of the plaintiff. The said suit property is ancestral and joint family property. The plaintiff also the coparcener of the said joint family as per the Hindu Succession Act. The plaintiff and defendant are in joint in possession of the suit schedule property and till today they had been no partition was taken place by meets and bounds. The said suit property is standing in the name of defendant. The plaintiff is totally deprived in the regard of disputes and differences arose between the plaintiff. It became inevitable for the plaintiff to ask for the partition and



separate possession of her $\frac{1}{2}$ share in the suit schedule property. On 02.08.2023 the plaintiff demanded the defendant to allot her legal share by effecting the partition by meets and bounds. But defendant is flatly refused the same. Therefore, plaintiff has constrained to file the suit for partition and separate possession against the defendants in respect of suit schedule property.

6. After the institution of the suit, the suit summons were issued to the defendant. In spite of service of summons the defendant did not appeared before the Court. Hence, he placed exparte.

7. In order to prove the case of the plaintiff, plaintiff himself is examined as PW- 1 and adduced the evidence of two witnesses as PW-2 and 3 and got marked the documents at Ex.P1 to 7.

8. Heard arguments.

9. On the basis of the pleadings of the parties and the documents produced by them the **points** that arise for consideration are as under:

1. Whether the plaintiff proves that the suit schedule property is the ancestral and joint family property of plaintiff and defendant and they have been in joint possession?



2. Whether the plaintiff is entitled for the relief of partition and separate possession as sought for?

3. What order or decree?

10. My findings on the above points are as follows:

1 : In the Affirmative

2: In the Affirmative

3: As per final order for the following:

REASONS

11. POINT No. 1 & 2: Since these points are interlinked to each other, I have taken up these points together in order to avoid repetition of facts and reasons.

It is the definite case of the plaintiff that she is the daughter of one Balappa. The defendant is the son of said Balappa. The plaintiff and defendant are the co-parceners. The deceased Balappa is the original propotious of the family of the plaintiff and defendant. The said Balappa died leaving behind plaintiff and defendant as his legal heirs. Further the said Balappa left suit schedule property as on date of death, there was no partition in between the plaintiff and defendant by meets and bounds with respect to suit schedule property. The defendant is the brother of the plaintiff .



The plaintiff also the coparcener of the said joint family as per the Hindu Succession Act. When the plaintiff demanded to effect the partition to defendant, but he flatly refused the same. Hence this suit.

12. In order to prove the case, the plaintiff is examined as PW 1 and got marked 7 documents at Ex.P1 to 7. In her affidavit filed in lieu of examination-in-chief, she has reiterated the plaint averments. She has furnished the genealogical tree of her family in the plaint. Further the genealogical tree furnished by the plaintiff is not disputed by the defendant. Moreover, the defendant did not cross examined the PW 1 to 3 to test their veracity. Therefore, the oral and documentary evidence of the plaintiff remained unchallenged and undisputed. Therefore, the claim of the plaintiff can be accepted. Moreover, in support of the case, the plaintiff adduced the evidence of two witnesses as PW 2 and 3. In the chief examination, they have supported the version of PW-1. The defendant did not cross examine the PW-2 and 3 to test their veracity.

13. On going through the documentary evidence i.e. Ex.P1 to 7 are the record of rights pertaining to suit property bearing Sy.No.52/1 is standing in the name of defendant by name Arogyappa S/o. Balappa. Ex.P-2



and 3 are the old RTC extracts are standing in the name of Balappa who is the original propositus. The Ex.P-4 to 7 are the record of rights pertaining to suit property bearing Sy.No.52/1 is standing in the name of defendant by name Arogyappa S/o. Balappa. It is to be noted that after demise of the original propositus the defendant got mutated his name in the revenue records by excluding the plaintiff.

14. On considering the oral and documentary evidence, suit schedule property is standing in the name of original propositus by name Balappa. Hence, it can be hold that it is the ancestral and joint family property of the plaintiff and defendant. Moreover the defendant did not appear and he has not contest the matter. Hence, he placed exparte. Therefore, the conduct of the defendant is to be taken into consideration. More over, the evidence of the plaintiff remained unchallenged and undisputed. Hence, this court is of the considered opinion that, the plaintiff has satisfactorily proved the suit schedule property is the ancestral and joint family property of the plaintiff and defendant.



15. At this juncture it is worth to quote **Section 6 of Hindu Succession Act which reads as under: “Devolution of interest in co-parcenary property.**

(1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005, in a joint Hindu family governed by the Mitakshara law, the daughter of a co-parcener shall,

(a) by birth become a co-parcener in her own right in the same manner as the son;

(b) have the same rights in the co-parcenary property as she would have had if she had been a son;

(c) be subject to the same liabilities in respect of the said co-parcenary property as that of a son,

16. Further it is relevant to quote section 8 of **Hindu Succession Act:**

General rules of succession in the case of males.
—The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter



firstly, upon the heirs, being the relatives specified in class I of the Schedule.

On going through Class I schedule, the heirs in Class-I are sons and daughter. It must be noted that the plaintiff and defendant are the children of deceased original propositus by name Balappa and they are coparcenars. Therefore, the plaintiff being the Class-I heir of the deceased Balappa is entitled for her $\frac{1}{2}$ share in the suit schedule property as sought for. Therefore, **this court answered the points No. 1 & 2 in the Affirmative.**

17. **POINT NO. 3**: For the discussions made and the findings given to the above points, the suit of the plaintiff is deserves to be decreed. In the result, this court proceed to pass the following:

ORDER

The suit of the plaintiff is hereby decreed.

The plaintiff is entitled to get $\frac{1}{2}$ share in the suit schedule property.

Considering the relationship between the parties to the suit, there shall be no order as to costs.

Draw preliminary decree accordingly.



(Dictated to stenographer, directly on the computer, corrected by me, & then pronounced in open court on this the 7th day of August, 2024)

**(Ambanna. K.)
C/C. Addl. Judge & JMFC,
Lingasugur.**

ANNEXURE

List of witnesses examined for the plaintiff:

PW 1 : Shri. Lurdamma
PW2 : Prakashappa
PW3 : Joseph.

Documents marked for the plaintiff:

Ex.P1 to 7 : RTC extracts.

witnesses examined for the defendants:
Nil

Documents exhibited for the defendants:
Nil

**C/C. Addl. Judge & J.M.F.C.
Lingasugur**



(Order pronounced in the open court vide separate judgment)

ORDER

The suit of the plaintiff is hereby decreed.

The plaintiff is entitled to get $\frac{1}{2}$ share in the suit schedule property.

Considering the relationship between the parties to the suit, there shall be no order as to costs.

Draw preliminary decree accordingly.

**Civil Judge & J.M.F.C.
Lingasugur**