

KADK310016702022



Presented on : 11-10-2022
Registered on : 11-10-2022
Decided on : 07-08-2025
Duration : 02Years 09Months 27Days

**IN THE COURT OF THE PRINCIPAL SENIOR CIVIL
JUDGE & A.C.J.M., AT PUTTUR**

: PRESENT :

**Smt. Prakriti Kalyanpur, B.A(L). L.L.B, L.L.M,
Principal Senior Civil Judge & ACJM,
Puttur, D.K.**

**DATED THIS THE 07th DAY OF AUGUST 2025.
::O.S./51/2022::**

BETWEEN:-

PLAINTIFF:-

1. **Sumathi,**
Aged about 54 years
W/o Late. Deranna Naika,
2. **Nalini,**
Aged about 30 years,
3. **Shubhalatha,**
Aged about 26years,

Above 2 and 3 are the children of
Late Deranna Naika,
All are R/at Seraje House,
Narimogru Village,
Puttur Taluk, D.K.

(By Adv:M.N.S)

-AND-

DEFENDANTS

1. **Ramanatha,**
Aged about 42 years,

S/o Deranna Naika,

2. **Sarojini,**
D/o Deranna Naika,
Aged about 40 years,

3. **Geetha,**
D/o Deranna Naika,
Aged about 36 years,

All are R/at Seraje House,
Narimogru Village,
Puttur Taluk, D.K.

4. **The Chief Executive Officer,**
Narimogru Agricultural Credit
Co-op, Society, Narimogru,
Puttur Taluk, D.K.,

5. **Vasanth Naik,**
S/o Mahalinga Naik,
R/at. Seraje House,
Narimogru Village,
Puttur Taluk, D.K.

(D1 to 3, 5 By Adv : Sri K.N.S.)
(D4 By Adv : Sri S.H.)

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:: JUDGMENT ::

The suit is for partition and mesne profits.

2. **In brief, it is the case of plaintiffs' that :**

The B schedule property originally was granted to Kariya Naika by the Land Tribunal by granting occupancy rights as per order LRYT

2783/1974-75 dated 22.03.1979. After the death of Kariya Naika the RTC was mutated to the name of Deranna Naika, his son. Deranna Naika married Sushila and Sumathi. The plaintiff No.1 is the 2nd wife and the plaintiff No.2 and 3 are his children through plaintiff No.1. The defendant No.1 to 3 are the children of 1st wife Sushila. Sushila passed away. Deranna Naika died on 22-09-2011. Thereafter the RTCs were changed to the name of plaintiffs and the defendant No.1 to 3. Now the plaint B schedule properties are in the possession of the defendant No.1 to 3 and the improvements if any done by them is only from income of the schedule properties. The defendant No.1 obtained loan from defendant No.4 for his own benefit. And so he is solely liable to repay the said amount. The said loan is not binding on other parties.

3. It is the further case of the plaintiff is that the 5th defendant has issued a notice dated 29-11-2019 stating that he entered into an agreement of sale on 16-05-2004 for an amount of Rs.11,19,000/-. The

plaintiffs never executed any agreement in favour of the defendant No.5. The defendant No.5 is a neighbor as on the eye of the B schedule property. He has entered into Agreement with the defendant No.1 without the knowledge of the plaintiff. The plaintiffs have issued apt replay to the notice. Inspite of request the defendant No.1 has denied to effect partition. Hence this suit.

4. All the defendants appeared before the court but only the defendant No.4 filed written statement.

The case of the defendant No.4 is that

5. The defendant No.4 has denied all the plaintiff averments. It has submitted that the plaintiffs and defendant No.2 and 3 have given authority to defendant No.1 through GPA bearing No.548416 dated 27-12-2016 which was notarized before Ramanatha A., Advocate. The name of the defendant No.4 has also cited in the said GPA as the financial institutions in which the B schedule property can be mortgaged. The Defendant No.4 on the basis of the GPA granted loan

by mortgaging the B schedule properties and receiving original title deed. However all the plaintiffs and defendant No.1 to 3 equally liable to pay the loan with interest but they were irregular in payment. Charge has been created over the B schedule property by registering mortgaged as per Document No. Book-1, PUT-1-07135-2016-17, dated 23-02-2017. Hence prays to dismiss the suit.

6. On the basis of the above pleadings, following issues have been framed by the predecessor:

1. Whether plaintiffs prove that B schedule properties are joint family properties?
2. Whether the plaintiffs prove that they are having 6 fair and equal share over the B Suit schedule properties?
3. Whether the Defendant No.4 proves that plaintiffs and defendant No.2 to 3 executed GPA in favour of the defendant No.1 on 27.12.2016 in order to manage, maintain for agricultural development authority given to appear manage and conduct the revenue forest works and conduct court cases etc.,?

4. Whether the defendant No.4 proves that as per the GPA was executed by the plaintiffs and defendant No.2 and 3, the defendant No.1 mortgaged the B suit schedule properties into the financial institution of defendant No.4?
5. Whether the defendant No.4 proves that the plaintiffs and defendant No.1 to 3 are equally liable to pay entire borrowed loan amount of Rs.5,00,000/- along with interest and penal interest?
6. Whether the plaintiffs entitle relief of partition as sought in the plaint?
7. Whether the plaintiffs entitle mesne profit?
8. What order or decree?

7. In order to prove the plaintiffs' case, the plaintiff No.1 got examined himself as PW.1 and got marked 7 documents. The defendant got examined himself as DW1 and got marked as Ex.D1 to Ex.D3.

8. Heard the arguments ;

9. In the light of the above, my findings on the above issues are as follows:

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

Issue No.4 : In the Affirmative
Issue No.5 : In the Affirmative
Issue No.6 : In the Affirmative
Issue No.7 : In the Affirmative
Issue No.8 : As per the final order
for the following ;

:: REASONS ::

10. **Issue No.1 :**

The plaintiffs have averred that the B schedule properties were originally granted to Kariya Naika, Father of Deranna Naika. After the death of Kariya Naika, the properties devolved on Deranna Naika. After the death of Deranna Naika and his first wife Sushila, the properties devolved on the plaintiffs and the defendant No.1 to 3. As against this the defendant No.1 to 3 have not filed any written statement. The defendant No.4 is the credit co-operative society and has denied these averments.

11. In order to prove their case the plaintiffs got examined the plaintiff No.2 as PW.1 and she filed chief examination affidavit reiterating the plaint averments.

She got marked Ex.P1 to Ex.P7. Ex.P1 is the order of the land tribunal, Ex.P2 is the Form No.10 issued to Kariya Naika with respect to the B schedule properties, Ex.P3 is the Genealogical Tree showing the family of the plaintiffs and defendant No.1 to 3. Ex.P4 to Ex.P7 are RTCs relating to Sy.No.297/1A, having an extent of 1.16 acres, Sy.No.87/4 with an extent of 1.20 acres, Sy.No.88/1 with an extent of 1 acres, Sy.No.88/2A3 with an extent of 12 cents. All the RTCs are in the joints name of plaintiffs and the defendant No.1 to 3. Except the defendant No.4, the defendant No.1 to 3 have not cross examined the PW.1.

12. Therefore, on perusal of Ex.P1 and Ex.P2 it is clear that the schedule B properties were originally granted to Kariya Naika. At present the schedule properties are in the joint names of plaintiffs and the defendant No.1 to 3 as per Ex.P4 to Ex.P7. Therefore the schedule B properties are the joint family properties of the plaintiffs and the defendant No.1 to 3. Accordingly, I answer issue No.1 in the **Affirmative**.

Issue No.2, 6 and 7:-

13. The plaintiffs have proved that the B schedule property is the joint family property of the plaintiffs and the defendant No.1 to 3. The plaintiffs are the children of the 2nd wife. It is settled position of law that the children of 2nd wife are also entitled as legal heirs to the property of the parents. **Sec.16(3) of Hindu Marriage Act** is relevant. It reads as:

3) Nothing contained in sub-section (1) or sub-section (2) shall be construed as conferring upon any child of a marriage which is null and void or which is annulled by a decree of nullity under section 12, any rights in or to the property of any person, other than the parents, in any case where, but for the passing of this Act, such child would have been incapable of possessing or acquiring any such rights by reason of his not being the legitimate child of his parents.]

The next question is about who are the legal heirs and what is their share of entitlement. The applicable law is Section 8 of Hindu Succession Act,

8. 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:—

(a) firstly, upon the heirs, being the relatives specified in class I of the Schedule;

(b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule;

(c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and

(d) lastly, if there is no agnate, then upon the cognates of the deceased

14. As per schedule-I sons, daughters and widows are all Class-I heirs. Therefore as legal heirs of Deranna Naika, Plaintiffs and defendant No.1 to 3 are all entitled to equal shares in the B schedule property. Since there are six legal heirs, each becomes entitle to

1/6th share. Therefore the plaintiff No.1 to 3, defendant No.1 to 3 are entitled to 1/6th share each.

15. Further, the plaintiffs have asked for enquiry into future mesne profits. Sec.2(12) of CPC defines mesne profits as: "*mesne profits of property means those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits, but shall not include profits due to improvements made by the person in wrongful possession*".

16. Here the word "wrongful possession" is of significance. The plaintiffs and the defendants are in joint and constructive possession of suit schedule properties. Only defendant No.1 to 3 are in actual possession, but this possession is not wrongful. It is an established principle of law that in a suit for partition mesne profits cannot be claimed. What can be claimed is enquiry into accounts. Therefore, the

plaintiffs are entitled to enquiry into accounts. Accordingly I answer issue No.2, 6 in the Affirmative and Issue No.7 Partly in the Affirmative.

Issue No.3 to 5:-

17. The defendant No.4 has contended that the defendant No.1 obtained loan of Rs.5,00,000/- on the basis of GPA executed by the plaintiffs and defendant No.2 and 3. Hence, they are all equally liable to repay the loan amount. In order to prove the same they got examined the CEO., of Defendant No.4 as DW.1, who filed his affidavit in lieu of chief examination and got marked Ex.D.2 and Ex.D3 i.e., loan account extracts.

18. During the cross examination of PW.1, the defendant No.4 got marked the GPA as Ex.D1. She has admitted her signature on the same. She has also admitted that the contents of Ex.D1 are correct. During the cross examination of DW.1, a suggestion is made whether he knows about cancellation of GPA.

19. The plaintiffs have contended that they have not executed any GPA in favour of the defendant No.1 and he has of his own volition taken the loan from defendant No.4. However, PW.1 has admitted about the execution of the GPA. Moreover, the plaintiffs have made a suggestion that the GPA is cancelled. Therefore the burden shifts on them to show the cancellation of GPA. This suggestion also results in presumption of execution of GPA. Therefore the defendant No.4 has proved that the plaintiffs and the defendant No.2 and 3 in favour of GPA of defendant No.1 and the defendant No.1 mortgaged B schedule property on the basis of said GPA. Since this court has already held that all the plaintiffs and the defendant No.1 to 3 are entitled to 1/6th share in the B schedule properties, they are all equally liable to pay the loan to the defendant No.4. Accordingly I answer issue No.3 to 5 in the **Affirmative.**

20. **Issue No.8 :** In view of the above said reasons, I proceed to pass the following ;

ORDER

The suit of the plaintiffs is hereby decreed. Looking at the relationship between the parties, no order as to cost.

The plaintiff No.1 to 3 and the defendant No.1 to 3 are entitled to 1/6th share each over the suit B schedule properties.

The plaintiffs are entitled to enquiry into accounts.

Draw preliminary decree accordingly.

(Dictated to the Stenographer, transcribed and typed by her, revised by me and then pronounced by me in the open Court on this the 07th day of August, 2025)

(Prakriti Kalyanpur)
Prl. Senior Civil Judge & ACJM
Puttur.

:ANNEXURE:

List of witnesses examined on behalf of plaintiff:

PW.1 : Nalini

List of documents produced on behalf of plaintiff:

Ex.P1 : Copy of the Order of the Land Tribunal,

Puttur
Ex.P2 : Copy of Form No.10
Ex.P3 : G-tree
Ex.P4 to 7 : RTC

List of witnesses examined on behalf of defendants:

DW1 : Madhukar H.

List of documents produced on behalf of defendants:

Ex.D1 : General Power of Attorney
Ex.D2 and 3 : Two joint loan extract of Defendant No.1.

**Prl. Senior Civil Judge & ACJM,
Puttur, D. K.**