

**IN THE COURT OF ADDITIONAL SENIOR CIVIL
JUDGE AT RAMANAGARA.**

ORIGINAL SUIT No.126/2011

Dated this the 10th day of August, 2012

PRESENT:

**Sri. K. Narayana Prasad, B.Sc., LL.B.,
Addl. Senior Civil Judge,
Ramanagara.**

BETWEEN:

1. Sri.Hanumalakkamma
W/o late Balaiah
Aged about 60 years
2. Smt.Rangamma
Aged about 40 years
3. Sri.Rama
Aged about 38 years

The plaintiffs 2 and 3 both are
Daughter and son of late Balaiah

4. Smt.Mutthamma
D/o late Motaiah
Aged about 60 years
5. Sri.Vijay Kumar
S/o late Hanumantharaju
Minor, represented by his
Natural guardian and uncle by name
Sri.Chikkahanumanthaiah (Plaintiff No.6)

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6. Sri.Chikkahanumanthaiah
S/o late Venkataramanappa
Aged about 22 years
7. Sri.Moogaiah
S/o late Venkataramanappa
Aged about 20 years
8. Sri.Doddutamaiah @ Narayanappa
S/o late Motaiah
Aged about 50 years
9. Sri.Chikkatamaiah @ Sanjeevaiah
S/o late Motaiah
Aged about 45 years
10. Smt.Venkatalakshmamma
w/o late Maddaiah
aged about 35 years
11. Sri.Venkatachala
aged about 22 years
12. Smt.Geeta
aged about 18 years
13. Sri.Srinivasa
aged about 15 years

The plaintiffs No.11 to 13 are
Sons and daughter of late Maddaiah

The plaintiff No.13 since minor
Rep. through his natural guardian
And mother by name
Smt.Venkatalakshmamma
(Plaintiff No.10)

14. Smt.Durgamma
w/o late Chikkahanumaiah
aged about 60 years

15. Smt.Gangamma
since died by LRs

15(a) Smt.Gangalakshmamma

15(b) Sri.Erappa

15(c) Sri.Poojappa

15(d) Sri.Munanjuni

15(e) Sri.Manjunath

The plaintiffs No.15(a) to 15(e)
all are majors and children of late Gangamma

16. Smt.Jayalakshmi
since dead by LRs

16(a) Smt.Jagamma
major,

16(b) Sri.Erappa
major

the plaintiffs 16(a) & (b) are
children of late Jayalakshmi

17. Smt.Gangalakshmi
w/o late Nagaraju
aged about 38 years

18. Anasuya
aged about 18 years

19. Nethra
aged about 16 years

20. Mahesha
aged about 15 years

Plaintiffs No.18 to 20 are
Son and daughters of late Nagaraju
The plaintiffs No.19 & 20 both are
Since minors represented through
Their natural guardian and mother
By name Smt.Gangalakshmi (plaintiff No.17)

21. Sri.Hanumanthaiah
s/o late Sanjeevaiah
aged about 60 years

The plaintiffs No.1 to 21 are
R/at Chikkabillakempanahalli Village,
Billakempanahalli Dhakle, Bidadi Hobli,
Ramanagara Taluk and Dist.

The plaintiffs are represented through their
GPA holder by name Smt.Hobakka
W/o late Hanumanjini
Aged about 37 years
R/at Chikkabillakempanahalli Village,
Billakempanahalli Dhakle, Bidadi Hobli,
Ramanagara Taluk and Dist.

Plaintiffs

(Rep. by Sri.L.R., Adv.)

AND:

1. Smt.Thimmakka
W/o late Doddahanumaiah
Aged about 50 years

2. Sri.Nagaraju
Aged about 35 years

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3. Sri.Puttaswamy
Aged about 30 years

4. Sri.Chandrashekar
Aged about 28 years

The defendants No.2 to 4 are
Sons of late Doddahanumaiah

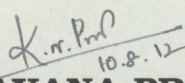
5. Sri.Shankarappa
S/o late Hotagaiah
Aged about 45 years

The defendants No.1 to 5 are
R/at Chikkabillakempanahalli Village,
Billakempanahalli Dhakle, Bidadi Hobli,
Ramanagara Taluk and Dist.

Defendants

(Rep. by Sri.C.R.S., Adv.)

1.	Date of Institution of the Suit.	10-03-2011.
2.	Date of commencement of evidence	16-11-2011.
3.	Nature of Suit.	Partition and separate possession
4.	Date on which the Judgement was pronounced.	10-08-2012
5.	Total Duration.	Years, Months & Days. 1 yr. 5 months.


(K. NARAYANA PRASAD)
ADDL. SENIOR CIVIL JUDGE,
RAMANAGARA.

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JUDGMENT

This is a suit for partition and separate possession.

2. The facts in brief of the case of the plaintiff is that, the plaintiffs and defendants are absolute owners and in peaceful possession of suit schedule property situated at Billakempanahalli Village, Bidadi Hobli, Ramanagara Taluk. The said property bearing Sy No.47/1 measuring 3 acres 24 guntas which was granted by the government on 06-07-1975 in favour of Hanumaiah @ Doddahanumaiah, Dummasandraiah, Kuruda and Hotagaiah. There was a partition between these persons wherein the suit schedule property came to the branch of second wife of Sanjeevaiah. One Sanjeevaiah the propositus who had two wives, the first wife's name is Hanumakka and after her death, he married second wife Sanjeevamma. The plaintiffs and defendants are representing the branch of Sanjeevaiah through his second wife Sanjeevamma. The plaintiffs and defendants are in joint possession of suit schedule property and defendants have got the revenue entries transferred to their name illegally by creating documents and subsequently under M.R.75/2009-10 they have got the revenue entries transferred to their name. The partition deed between the defendants are not binding on the plaintiffs. Accordingly the suit is filed for effecting partition of 4/5th share in the suit schedule property and to declare that the partition deed 21-06-2010 by the defendants in

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respect of suit schedule property is not binding on the plaintiffs.

3. The defendants 1 to 5 have filed written statement and they have contended that the Sy No.47/1 measuring 3 acres 24 guntas was granted in favour of Hanumaiah, Dummasandraiah, Kuruda and Hotagaiah. The said 4 brothers were in possession and in partition between these four brothers, suit property came to the share of Hotagaiah, the katha got transferred to the individual names. Hanumaiah and Kuruda have sold the property to the extent of 27 guntas in favour Velliyappa Textiles and Dummasandraiah has sold 7 guntas and retained 20 guntas. Hotagaiah has retained 1 acre 27 guntas. The defendants 1 to 3 have developed the property and they are in possession and they are growing crops in the properties. Thimmakka has also obtained loan in respect of suit property it was cleared by family members. There was a partition among the family members of Doddahanumaiah and Shankarappa wherein $34\frac{1}{2}$ guntas came to be allotted in favour of Thimmakka, Nagaraju, Puttaswamy and Chandrashekar and remaining $32\frac{1}{2}$ guntas was allotted to Shankrappa. The plaintiffs without having any right, title and interest have filed the present suit without any merits. Accordingly, prays for dismissal of suit.

4. In view of the above rival contentions following issues are framed:

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1. Do the plaintiff prove that suit schedule property is ancestral or joint family property and amenable for partition?
 2. Do the plaintiffs prove that partition between defendants on 22-06-2010 in respect of suit schedule property is illegal and not binding on the share of the plaintiffs?
 3. Whether plaintiffs are entitled for 4/5th share in the suit schedule property as claimed in the plaint?
 4. Whether the plaintiff is entitled for the relief's claimed?
 5. What order or decree?
5. The GPA holder of all the plaintiffs by name Hombakka got herself examined as PW1 and 15 documents are exhibited. Sri.N.Ravikumar was examined as PW2. The defendants have not cross examined PW1 and 2 or led any evidence or produced any documents. The learned counsel for the plaintiffs has filed written arguments. The defendants have not addressed any arguments or filed written arguments within stipulated period even after granting such opportunity.
6. My answer to the above issues are:

Issue No.1 to 5: In the affirmative for the following

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REASONS

7. ISSUE No.1: It is the case of the plaintiffs that the suit schedule property is undivided joint family property. The defendants 1 to 5 have submitted written statement and it is signed by all the defendants. The relationship between the parties are not disputed in specific terms. The only denial of the defendants is the right of the plaintiffs to claim of suit schedule properties. One Sanjeevaiah the mulapurusha of the family of the plaintiffs and defendants, he had two wives, the first wife Hanumakka through Sanjeevaiah had four children by name Hanumaiah, Dummasandraiah, Kuruda and Hotagaiah, through second wife Doddahanumaiah, Hanumakka, Puttamma, Motaiah, Chikkahanumaiah, Hotagaiah and Hanumanthaiah are born. The defendants 1 to 5 are the members of branch of Hotagaiah. The plaintiffs are representing other children and their legal heirs of Sanjeevamma. The plaintiffs and defendants are having root through their ancestors Sanjeevaiah and Sanjeevamma. The first wife's children are not before the court. The plaintiffs contend that the suit schedule property came to the second wife's children in a partition. But the defendants contend that it came to the share of Hotagaiah only. On going through the plaint averments the plaintiffs have stated that originally 3 acres 34 guntas was allotted in favour of Hanumakka, Puttamma and Motaiah (first wife's children) and Hotagaiah (second wife's son). Later, there was inter-se partition between

these four persons and under such partition, suit schedule property to the extent of 1 acre 27 guntas came to Hotagaiah and after the death of Hotagaiah his son defendant 5 Shankarappa and legal heirs of another son Doddahanumaiah i.e., defendants 1 to 4 have partitioned the property wherein 32 ½ guntas came to 5th defendant and 34 ½ guntas came to other defendants. The plaintiffs contend that it is not an exclusive property of Hotagaiah but it is the property allotted to the branch of second wife's children. There is no dispute that originally the property was allotted in favour of four persons aforesaid. Now the point that arise for consideration in this case is whether the property came to the name of Hotagaiah in his individual capacity or on behalf of children of Sanjeevamma has to be ascertained. The plaintiff has reiterated the plaint averments in evidence of PW1 and PW2 has supported the evidence of PW1 by stating similar facts. The plaintiffs have produced as many as 15 documents before the court. Ex.P1 is power of attorney executed by all the plaintiffs in favour of PW1. The 2nd document is genealogical tree which disclose the family details of Sanjeevaiah and the description of plaintiffs and defendants can be seen in the said document. Other documents Ex.P3 to P12 are RTC Extract in respect of suit schedule property. Ex.P13 is mutation extract, P14 is the order passed by the Assistant Commissioner, Ramanagara. Before forming any opinion about the nature of the property, it is just and necessary to

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understand Ex.P14. This is a document which is issued by the Asst. Commissioner, Ramanagara on 06-07-1975. On perusal of this document one can gather information that an extent of 3 acres 24 guntas including 6 guntas of phut-kharab came to be granted in favour of Hanumaiah, Dummasandraiah, Kuruda and Hotagaiah. The Asst. Commissioner has described the property and the right of the parties. It is observed in the order that mulapurusha was Sanjeevaiah and was the barwardar and first and second wife's children are representing his office. There is a clear observation that $\frac{1}{2}$ share was in possession of Hanumaiah, Dummasandraiah and Kuruda who are the children of first wife, remaining $\frac{1}{2}$ share was in possession of Hotagaiah, the son of second wife. It appears to the court that the property was allotted to the parties based on the right of the barwardar office held by Sanjeevaiah. The report of the Tahsildar cited in the order only shows that it was in possession of Hotagaiah but never says that it is the exclusive property of Hotagaiah. The RTCs Ex.P5 to P9 are old RTCs disclose that the property was originally standing in the name of Sanjeevaiah as mentioned in column 9 of Ex.P5 to P7. The names of his four children are subsequently shown in column 9 and 12. Accordingly one thing is very clear that originally it was the property of Sanjeevaiah. There is no dispute that Sanjeevaiah had two wives and the plaintiffs and defendants are representing the branch of second wife. The entire allegations of the plaint and

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evidence remained not challenged by the defendants. On going through Ex.P14 and P13 the mutation register extract, it never shows that it is exclusively granted in favour of four sons. There is a clear reference about the family to which these grantees are representing. There is also clear reference about barwardar office which supports the case of the plaintiffs. In view of the same, there is absolutely no hurdle to come to the conclusion that the suit schedule property is ancestral joint family property of plaintiffs and defendants. Accordingly, issue No.1 is answered in affirmative.

8. Issue No.2: The plaintiffs have shown that it is their ancestral property. The branch of Hotagaiah got the property partitioned in their name in the year 2009-10 and revenue records are transferred as per M.R.75/2009-10. On going through the RTCs the revenue entries continued into the four brothers name till 1996-97. Later it appears that Hanumaiah and Kuruda have sold portion of the property etc., to third parties and mutation accordingly effected in the revenue records. When it is shown before the court that it is not an exclusive property of Hotagaiah, but it is the family property of the entire branch of second wife of Sanjeevaiah, inter-se partition between the defendants 1 to 5 is not binding on other family members. The defendants 1 to 5 even after taking the plea that it is the exclusive property of Hotagaiah, have not challenged the case of the plaintiffs in any manner. The

entire evidence of PW1 and 2 and documents Ex.P1 to P14 remained not challenged for the reasons best known to the defendants. For the reasons and finding given under issue No.1 when it is the property of joint family, all the family members have equal right in accordance with law. Under such circumstances, any unilateral arrangement between some family members in partitioning the property is not binding on other family members. Accordingly, issue No.2 is answered in affirmative.

9. Issue No.3: After holding that the suit schedule property is joint family property and the partition inter-se between the defendants are not binding on the plaintiffs, the next question arises is the actual determination of shares of the parties. The plaintiff and defendants formed joint family and all of them are joint family members. The second wife of Sanjeevaiah had 7 children out of which two daughters are dead. The remaining children of Sanjeevamma got 1/5 share each in the property looking into their status. Accordingly, the plaintiffs 1 to 3, 4 to 13, 14 to 20, defendants 1 to 5 are entitle for 1/5th share each. The plaintiff 21 is entitle for 1/5 share. Accordingly, plaintiffs together entitle for 4/5th share in the suit schedule property. Accordingly, the plaintiffs have proved that they are entitle for 4/5th share together in the suit schedule property. Hence, issue No.3 is answered in affirmative.

10. Issue No.4 and 5: In view of the findings of issues 1 to 3 the plaintiffs are entitle for the relief's claim, accordingly, I proceed to pass the following

ORDER

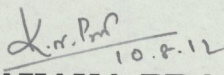
Suit of the plaintiffs is decreed with cost.

The plaintiffs 1 to 3, are entitle for 1/5th share, plaintiffs 4 to 13 are entitle for 1/5th share, plaintiffs 14 to 20 are entitle for 1/5th share and plaintiff 21 is entitle for 1/5th share and the plaintiffs together are entitle for 4/5th share in all in the suit schedule property.

It is declared that the partition entered into between the defendants on 22-06-2010 in respect of suit schedule property is not binding on the plaintiffs.

Draw preliminary decree accordingly.

(Dictated to the Stenographer, transcribed and computerized by her, corrected, revised and then pronounced by me in the open court on this the **10th day of August 2012**)


(K. NARAYANA PRASAD)
ADDL. SENIOR CIVIL JUDGE,
RAMANAGARA.