

**IN THE COURT OF THE FIRST ADDL. CIVIL JUDGE &  
J.M.F.C., AT KANAKAPURA**

**Dated this the 26<sup>th</sup> day of September, 2014**

**PRESENT : Sri.V.M.Anandashetty, B.Sc.,LL.B.  
First Addl. Civil Judge and JMFC, Kanakapura.**

**O.S.No.243/09**

**Plaintiff :** 1. Smt. Ningamma,  
W/o Thammaiah,  
Aged about 50 years,  
R/o Channasandra village,  
Kodihalli hobli,  
Kanakapura Taluk,  
Ramanagara District.  
  
(Rep. by Sri. R.C., Advocate)

**V/S**

**Defendants :** 1. Ningamma,  
W/o late Ningegowda @  
Kenchegowda,  
Aged about 62 years  
  
2. Sukanya,  
W/o late Thimmegowda,  
Aged about 40 years,  
R/o #434, 1<sup>st</sup> main road,  
Ward No.57, 4<sup>th</sup> Stage,  
J.P. Nagar, Bangalore.  
  
3. Gangamma,  
W/o Chamegowda @ Karigowda,  
Aged about 55 years,

R/o Seegekote village,  
Shivanahalli post,  
Kasaba hobli,  
Kanakapura Taluk,

4. Renuka,  
W/o Munimadu,  
Aged about 32 years,  
Next to Narayanagowda Street,  
Basaveshwara Nagara,  
Kanakapura Town.
5. Bharathi,  
W/o Girish,  
D/o Chmegowda @ Karigowda,  
Aged about 30 years,  
R/o Seegekote village,  
Shivanahalli post,  
Kasaba hobli,  
Kanakapura Taluk,
6. Suresha,  
S/o Chamegowda @ Karigowda,  
Aged about 25 years,
7. Chamaraju,  
S/o Chamegowda @ Karigowda,  
Aged about 22 years,  
R/o #434, 1<sup>st</sup> main road,  
Ward No.57, 4<sup>th</sup> stage, J.P.Nagar,  
Bangalore,
8. Chamamma,  
W/o Kempegowda,  
Aged about 55 years,  
#27, Kempegowda,  
Subramanyapura main road,

Near Kumaran College,  
Brundavan Nagar,  
Bangalore.

(Rep. by  
D3 to D7 Sri. R.C., Advocate  
D1 and D8 Exparte)

Date of institution of the suit : 10-09-2009  
Nature of the suit : Partition and separate possession  
Date of the commencement of  
recording of the evidence : ---  
Date on which the Judgment  
was pronounced on : 26-09-2014  
Total duration : Year/s Month/s Day/s  
05 00 16

**(V.M.ANANDASHETTY)**  
**First Addl.Civil Judge and JMFC.,**  
**Kanakapura.**

### **JUDGMENT**

This suit of the plaintiff is for the relief of partition and separate possession of her 1/4<sup>th</sup> share in the suit property by metes and bounds.

2. The suit property bearing Sy.No. 22/B measuring in 1 acre 15 guntas is situated at Segekote village Kanakapura Taluk. The plaintiff contends that one Bette Gowda is the propositus and Smt. Shivananjamma was his wife. They had 4 children namely Ningegowda @ Kenchegowda, Chamegowda @ Karigowda, Chennamma and the plaintiff Ningamma. The plaintiff elder brother Ningegowda has expired and defendant No.1 and 2 are his heirs. The plaintiffs another brother Chennegowda has also expired and defendant No.3 to 7 are his heirs. The defendant No.8 is the sister of plaintiff.

3. It is contended that the suit property was purchased by the mother of plaintiff and defendant No.8 by name Shivasnanjamma through registered sale deed. In order to purchase said property the said Shivananjamma had alienated the property inherited by her from her father. The said Shivananjamma died intestate. After death of Shivananjamma, the property came to be mutated in the name of plaintiff's brother deceased Chamegowda and after his death the revenue records have been mutated in the name of defendant No.3 behind the back of plaintiff. The plaintiff has got 1/4<sup>th</sup> share in the suit property and defendants have refused to concede to her demand for partition and separation possession of her 1/4<sup>th</sup> share in the suit property.

4. After institution of suit summons were directed to the defendant. The defendant No.1, 2 and 8 though served have remained exparte. The 3<sup>rd</sup> defendant has chosen to file written statement.

5. In the written statement filed by the defendant No.3 the interse relationship as averred in the plaint between the parties to the suit is admitted and rest of the facts averred in the plaint are denied.

6. The 3<sup>rd</sup> defendant contends that the plaintiff and defendant have divided their joint family property through an partition about 20 years ago and in such partition suit property has fallen to their share. Since the said partition the 3<sup>rd</sup> defendant is in possession and enjoyment of suit property and plaintiff has no share in it. Accordingly terming the cause of action an frivolous and vexatious, this defendant has prayed for dismissing the suit.

7. Upon perusing the averments made in the plaint, written statement and the documents produced by the respective parties I was of the opinion that the averment made in the written statement are vague. On 3-09-2014 I heard the plaintiff U/O 10 of C.P.C, the substance of which conformed with plaint averment. To here the 3<sup>rd</sup> defendant and her counsel U/O 10 of C.P.C and for final disposal of suit U/O XV the case

was adjourned to 5-09-2014. On the said neither 3<sup>rd</sup> defendant nor her counsel was present. Again I adjourned the case to 16-09-2014. On 16-09-2014 the 3<sup>rd</sup> defendant and her counsel was absent. The matter was called thrice on said day as there was no representation on behalf of 3<sup>rd</sup> defendant. Hence I posted the case for disposal U/O XV rule of C.P.C as it appeared to me that parties are not at issue on any question of law or of fact.

8. The plaintiffs in support of her pleadings has produced the certified copy of sale deed in respect of suit property dated 22-04-1962. The plaintiff as also produced 2 more sale deed to show that her mother Shivananjamma had sold the property inherited by her from her father in favour of one Bettegowda and Kapanigowda in order to purchase suit property. From the sale deed in favour of mother of plaintiff by name Shivananjamma dated 22-04-1962 in respect of suit property, it appears that the said Shivananjamma is the absolute owner of said property and it is her separate property. This finding of mine, is further fortified by Sec.14 of the Hindu succession Act. Except evasive denial of plaintiff averment, the defendant has not placed on record any differing or inconsistent material as to how the suit property came to be purchased by Shivananjamma. Therefore the denial of the averment in plaintiff as to the manner in which the suit property came to be

purchased by the deceased Shivananjamma is vague and it is not specific. The 3<sup>rd</sup> defendant has neither offered any explanation as to how the property came to be purchased in the name of Shivananjamma nor has placed any materials to controvert the sale deed dated 22-04-1962 in the name of Shivananjamma. The plea of previous partition by this defendant is also vague and ambiguous. The defendant has not stated when the alleged partition took place, who were parties to it, what were the properties, what all were the subject matter of partition etc. Upon such evasive denials and vague pleas no issue arises.

9. Assuming for a moment that joint family properties of erstwhile joint family of parties to suit did exist, even in such an event the suit property could not have been blended in it for simple reason that suit property is female's absolute property i.e. mothering property and succession to it is governed by section 15 of Hindu Succession Act 1956.

10. Mere mutation of 3<sup>rd</sup> defendant's name to the property after death of Shivananjamma will not oust the rights and interest of the plaintiff in the suit property the mutation entries neither invest nor divest the interest of parties. \*

11. I have already opined that the suit property is the absolute property of deceased Shivananjamma mother of

plaintiff. It is undisputed that Shivananjamma died intested and she was succeeded by her four issues. The plaintiff is one of the issues U/S.15 of the Hindu Succession Act after death of mother her property first devolves upon her sons and daughters equally. In present case Shivananjamma had 2 sons and 2 daughters. Thus plaintiff being one of the daughter is entitle for 1/4<sup>th</sup> share in the suit property. For the aforesaid reasons I proceed to pass following order.

### **ORDER**

The suit of the plaintiff is decreed. It is decreed that the plaintiff is entitled for partition and separate possession of her 1/4<sup>th</sup> share in the suit property by metes and bounds.

Considering the relationship between parties they are directed to bear their own costs.

Draw preliminary decree accordingly.

(Dictated to the Stenographer, transcribed by her, transcript revised and corrected by me and then pronounced in the open court on 26.09.2014)

**(V.M.ANANDASHETTY)**  
**First Addl. Civil Judge and JMFC,**  
**Kanakapura.**

**ANNEXURE****1. List of witnesses examined by the plaintiff:**

-Nil-

**2. List of documents produced by the plaintiffs:**

-Nil-

**3. List of witnesses examined by the defendants:**

-Nil-

**4. List of documents produced by the defendants:**

-Nil-

**(V.M.ANANDASHETTY)**  
**First Addl. Civil Judge & J.M.F.C.,**  
**Kanakapura**

**ORDER**

The suit of the plaintiff is decreed. It is decreed that the plaintiff is entitled for partition and separate possession of her 1/4<sup>th</sup> share in the suit property by metes and bounds.

Considering the relationship between parties they are directed to bear their own costs.

Draw preliminary decree accordingly.

**First Addl. Civil Judge and JMFC,  
Kanakapura.**

