

1) OS. No. 982-2014 Jt.

TITLE SHEET IN ORIGINAL SUITS.

C.R.P.No.67

Form No.
9(Civil)
Title sheet for
judgement in
suits (R.P.91)

**IN THE COURT OF THE SENIOR CIVIL JUDGE & J.M.F.C.
MAGADI.**

PRESENT

Smt. Yermal Kalpana
BSc. LLM
Sr. Civil Judge & JMFC.
Magadi.

DATED THIS 5th Day of October 2018

:: O.S.No.982/2014 :

PLAINTIFF:-

1. Sri. Mara Arasaiah
S/o late Hanumanthaiah
aged about 57 years,
residing at,
Jattipalya village
Kadabagere Hobli
Bangalore South Taluk
2. Smt. Lakshamma
W/o late Channigappa
D/o late Hanumanthaiah
Aged about 55 years
Residing at
Kachanahalli village
Budihal post
Kasaba Hobli
Nelamangala Taluk

(By. Adv. R.S.)

DEFENDANTS;

1. Sri. Muninarasaiah
S/o late Chikkarasappa
aged about 49 years
2. Sri. Muniramaiah
S/o late Chikkarasappa,
aged about 45 years
3. Smt. Nagamma
W/o late Chikkarasappa,
aged about 58 years
4. Sr. Ramaiah
S/o late Chikkarasappa,
aged about 38 years
5. Smt. Hanumakka
D/o late Chikkarasappa,
W/o Siddappa
aged about 35 years,
6. Sri. Lakshmana
S/o Chikkarasappa
aged about 33 years
7. Sri. Hanumanthaiah
S/o Chikkarasappa
aged about 32 years
the defendant No. 1 to 7
are all residing at
Jattipalya Village
Kadabagere post
Tavarekere Hobli'
Bangalore south Taluk
8. Smt. Manjula
W/o Devaraj
D/o late Chikkarasappa
aged about 31 years

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residing at
Hosakere Beedi
Tavarekere village
Tavarekere Hobli
Bangalore south Taluk

(Def. 1 by Adv. T.K.H)
(Def. 2 Exparte)
(Def. 3 by Adv. T.R.B)
(Def. 4 to 8 by Adv. D.H.M)

Date of institution of the suit: 03.11.2014

Nature of the suit: Partition

Date of recording of evidence 13.04.2016

Date on which judgment was pronounced. 05.10.2018

Total duration.

Years.	Months.	Days.
03	11	02

Smt. Yermal Kalpana
SENIOR CIVIL JUDGE.& J.M.F.C.
MAGADI.

J U D G M E N T

The plaintiffs have filed the suit seeking for the relief of partition of their half share in the suit schedule properties by metes and bounds and also for declaring that the registered Wills dated 18.11.2003 and 9.10.2003 executed by late Chikkarasappa in favor of 3rd defendant Nagamma are not binding on their share.

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2. The plaint averments in brief is that late Ramaiah is the propositus of the family of the plaintiff and defendants and he had two sons namely, Hanumanthaiah and Chikkarasappa. They both are dead. The plaintiffs are the legal heirs of 1st son Hanumanthaiah and the defendant Nos. 1 to 8 are the legal heirs of 2nd son Chikkarasappa, the said Chikkarasappa had two wives i.e., Hanumakka and Nagamma (defendant No. 3) The 1st wife Hanumakka is dead, the defendant Nos. 1 and 2 are born to the 1st wife Hanumakka and the defendant Nos. 4 to 8 are born to the 2nd wife Nagamma. The plaintiffs and the defendants constitute Hindu undivided joint family and the suit schedule properties are the ancestral and joint family properties. During the life time of Ramaiah the grand father of the plaintiff, he was in physical possession and enjoyment of the suit schedule properties, after his death, his 2nd son Chikkarsappa was managing the affairs of the joint family properties as kartha. The land bearing Sy. No. 20/6 measuring 2 acres 38 guntas i.e., item No.5 of the suit schedule property was under the personal cultivation of the grandfather of the plaintiff. But in the year 1985, the grant for the said property was made by the Government in the name of late Chikkarasappa. Even till date the plaintiffs and the defendants are in continuous and in joint possession and enjoyment of the suit schedule properties.

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3. The plaintiffs further submit that earlier the revenue records of the suit schedule properties in item Nos. 1 to 4 and 6 were standing in the name of grandfather of the plaintiff and after his death it has been changed in the name of husband of the 3rd defendant. There was no partition effected in the family of the plaintiffs and the plaintiffs learnt that the defendants by colluding with each other are attempting to alienate the suit schedule properties on the basis of created documents and on 05.07.2014, the plaintiffs demanded the defendants to effect partition.

4. After the 3rd defendant had filed the written statement, the plaintiffs by amending the plaint has further contended that the item No. 5 of the suit schedule property was granted to Chikkarasapa by Tahasildar on 21.01.1995. Chikkarasapa during his life time has executed registered Will dated 18.11.2003 in favor of the 3rd defendant. The item No. 5 is not the self acquired property of Chikkarasapa and he has not acquired any independent right over the said property. Chikkarasapa died on 18.11.2003, and even prior to his death i.e., about 1 year back he was bedridden and he was not able to do his work. As he died on 18.11.2003 the question of executing the Will on the same day does not arise and hence the said document is created for the purpose of knocking of the property.

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5. The plaintiffs have also stated that another Registered Will dated 09.10.2003 has been executed by Chikkarasapa in favor the 3rd defendant and other and this document is also a created document and accordingly, both the Wills are not binding on the right and share of the plaintiffs. The cause of action for the suit arose on 05.07.2014 when the plaintiffs demanded the defendants to effect partition and put them in separate possession of the suit schedule properties. When the defendant refused to effect partition, the plaintiffs were constrained the file the suit.

6. In response to the suit summons the defendant Nos. 1, 3 and 8 have appeared before the court through their counsel. The defendant No. 2 has remained absent and was placed exparte. The defendant No. 1 has filed written statement only admitting the relationship of the parties, the rest of the plaint amended has been denied.

7. According to the 1st defendant, the plaintiffs have suppressed the earlier partition effected between the 1st plaintiff and father of the 1st defendant and as per the earlier partition, the 1st plaintiff is enjoying his half portion to the 1st item of the suit schedule property and he is also put in separate possession and enjoyment of his half share in the 2 items the suit schedule property but the khata of the suit schedule properties are standing in the name of the grandfather of the

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plaintiff. The plaintiff is also enjoying half portion in the item No. 3 and katha has already been made in the name of the 1st plaintiff and father of the 1st defendant. The item No. 4 is the joint family property of the defendants and the plaintiff is not entitled for any share in the same. The defendant No. 3 has created the Will when the civil suit is pending in OS. No. 108/2006 on the file of the 1st Additional Civil Judge and JMFC, Magadi. The defendant No. 3 and her children by colluding with the plaintiffs has filed the case against the 1st defendant. Even in item No. 6 of the suit schedule property, the 1st plaintiff was given share. The item no. 5 of the suit schedule property is the self acquired property of the father of the 1st defendant as he himself had filed an application before the Land Tribunal and was personally cultivating the property and the item No. 5 was granted in the name of father of the 1st defendant. So the plaintiffs and the other defendants have no right in item No. 5 of the schedule property. The 2nd plaintiff was married prior to 2005 and so she is not entitled for any share in the suit schedule property. On these grounds the 1st defendant has prayed for dismissing the suit.

8. The defendant No. 3 has also filed her written statement which has been adopted by defendant Nos. 4, 7 and 8.

9. The defendant No. 3 in her written statement has denied the genealogical tree furnished by the plaintiff and she has also

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denied that the plaintiffs and the defendants constitute. Hindu undivided joint family and also that the suit schedule properties are the ancestral and joint family properties. The 3rd defendant has also submitted that the description, boundary and extent of the suit schedule properties are not correct and the suit is barred by law of limitation and she has also stated that the suit is bad for non-joinder of necessary parties. According to her the item No. 5 of the suit schedule property was a government land and it was allotted to Chikkarasappa on 21.01.1995 and this it is the self acquired property of Chikkarasappa. Chikkarasappa had executed a registered Will dated 18.11.2003 in her favor with respect to the item No. 5 of the property and since then she is in exclusive lawful possession and enjoyment of the said property. The 3rd defendant has also stated that Chikkarasappa has executed a registered Will dated 09.10.2003 in favor of her and others and they are all enjoying the said properties as per the registered Will dated 09.10.2003, the plaintiffs have no manner of right, title interest or possession over the suit schedule properties. On these grounds the 3rd defendant has prayed for dismissing the suit.

10. Based on the pleadings of the parties the following Issues have been framed:

ISSUES

- 1.** Whether the plaintiffs proves that they and the defendants 1 to 8 are the joint family members and the suit schedule properties are their joint family properties ?

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2. Whether the plaintiffs prove that they are entitle for partition and separate possession of their 1/2th share in the suit schedule properties ?
3. Whether the plaintiffs are entitle for the relief sought for in this suit ?
4. To what order or decree ?

10. The SPA holder i.e the son of the 1st plaintiff M. Shivakumar has been examined as PW1 on behalf of the plaintiffs and the plaintiffs have got marked Ex.P1 to P12 documents. The defendants have neither cross examined the PW1 nor adduced any evidence.

11. My findings to the above points are as under:-

point No.1	In the negative
point No.2	In the negative
Point No. 3	In the negative
point No. 4	As per final order

For the following

REASON S

12. Issue Nos. 1 to 3:- These issues are interrelated, hence they are taken up together for discussion. The plaintiff's had initially filed the suit seeking for the relief of partition of their ½ share in the suit schedule properties. Later by way of amendment, the plaintiff had sought to declare that the Wills dated 18.11.2013 and 09.10.2003 executed by Chikkanarasappa in favor of the 3rd defendant Nagamma with respect to item No. 5 and 4 of the suit schedule property as not binding on their shares.

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13. Admittedly, the suit schedule properties are the ancestral and joint family properties of the plaintiffs and defendant Nos. 1 to 8. The original propositor late Sri. Ramaiah had 2 sons Hanumanthaiah and Chikkarasappa. The plaintiffs are the legal heirs of Hanumanthaiah and the defendant Nos. 1 to 8 are the legal heirs of Chikkarasappa.

14. The SPA holder i.e the son of the 1st plaintiff M. Shivakumar has been examined as PW1 on behalf of the plaintiff's. He has reiterated the plaint averments in his chief examination and has stated that his father the 1st plaintiff is suffering from illness and hence is not in a position to appear before the court. According to him, the suit schedule property originally belonged to the moolapurusha Ramaiah. In support of his contention PW-1 has got marked Ex.P1 to P8 documents. Later after the 3rd defendant filed his written statement, PW-1 filed his additional chief examination and produced Ex.P9 to Ex.P12 documents. Ex P-1 is the Genealogical tree; Ex P-2 to P-8 are the RTC's; Ex P-9 is the death certificate of Chikkarasaiah; Ex P-10 and 11 are the certified copies of the Will's dated 09.10.2003 and 18.11.2005 respectively. Ex.P10 is the certified copy of the Will dated 09.10.2003 under which Chikkarasappa has bequeathed properties to the plaintiff No1 and Defendant Nos 1 to3 and one Anasuya and Venkatalakshmmamma. Ex P-11 is the certified copy of the Will dated 18.11.2003 executed by Chikkarasappa

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in favor of 3rd defendant- Nagamma. The Ex.P12 is the SPA executed by plaintiffs. The RTCs Ex.P-2 to P-8 are pertaining to Sy. No. 25/4; Ex.P25/2; Sy No. 25/6, Sy. No. 28/4 which shows the names of Ramaiah, Chikkarasappa and Kempamma. The Ex.P6 mentions the name of Kempamma, but she is not a party to the suit.

15. According to PW-1, after the death of Ramaiah the 2nd son Chikkarasappa was managing the suit schedule properties as kartha of the family. The item No. 5 of the suit schedule property though was cultivated by the plaintiff's grandfather, it was granted in the name of Chikkarasappa on behalf of the joint family properties in the year 1985. The suit schedule properties are 6 item in Sy. No. 25/4, 25/2, 25/6, 28/3, 20/p6 and 27/7 (A) of Chennanahalli village, Tavarekere Hobli, Bangalore South taluk. Though the plaintiff has mentioned that these properties are the ancestral and joint family properties of Sri. Ramaiah, other than item No. 1 of the suit schedule property i.e shown as Sy.No. 25/4, no other documents have been produced by the plaintiff to show that the rest of the properties are the ancestral and joint family properties of the plaintiffs and defendants.

16. On perusal of the Ex.P10 and P11, the Wills dated 18.11.2003 and 09.10.2003, it can be seen that there is a recital that the property in Sy. No. 25 is the ancestral property.

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In the Ex P-10 the properties in Sy.No. 21/3 and 28/3 are shown as the his self acquired properties of Chikkarasappa and those properties were bequeathed to defendant No. 3, plaintiff No. 1, defendant No. 1, defendant No. 2 and Anasuya and Venkatalakshamma. The plaintiff though had knowledge about this Will dated 09.10.2003 and 18.11.2003, till date he has neither impleaded Anasuya or Venkatalakshamma the beneficiaries under the Will as parties to the suit. The plaintiff has mentioned that defendant Nos. 4 to 8 are the children of Chikkarasappa and Nagamma, but the Wills and Ex.P10 and P11 do not mention the names of Hanumakka and Majula i.e., the defendant no 5 and 8. Though both these defendant No's 5 and 8 are shown as daughters of Chikkarasappa, their names are not mentioned anywhere.

17. The plaintiffs have approached the court for relief, hence the burden of proving their case beyond all probabilities lies on them. Admittedly, the defendants have neither cross-examined PW-1 nor have led their evidence. But the plaintiffs themselves by not adducing any cogent evidence have failed to prove that the defendant Nos. 5 and 8 are the joint family members or that the plaintiff and the defendants are joint family members as on the date of filing of the suit. On the other hand Anasuya and Venkatalakshamma mentioned in Ex.P10 and Ex.P11 shown as daughters of Chikkarasappa and Nagamma are also not made as parties to this suit.

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18. The plaintiffs have also not produced any documents with respect to the item No.5 of the suit schedule property. Merely by stating that the item No. 5 of the suit schedule property has been granted in favor of Chikkarasappa on behalf of the jonit family without corroborating it by way of documentary evidence also goes against the plaintiffs.

19. The documents produce by the plaintiff themselves goes to create a doubt regarding the severance of a joint family status of the plaintiff and the defendants. The Ex P-4 is standing in the joint name of Chikkarasappa and the first plaintiff Mara Arasaiah. There is no explanation by the plaintiff as to how only the names of the plaintiff and Chikkarasappa has been entered in the RTC. In the RTC Ex P-4 in column no 10 it is mentioned as MR 10/1990-91. This MR has not been produced by the plaintiff.

20. The defendant No.1 in his written statement has contended that a civil case in OS No. 108/2006 is pending before the Ist Additonal Civil Judge, Magadi with respect to the creation of Will in favour of the D No.3. Even the contention of the 1st defendant that the 1st plaintiff is separately enjoying half portion of the item no 3 and item no 6 of the schedule properties has also not been substantiated by the plaintiff through any cogent evidence. All these facts have not been explained properly by the plaintiff.

21. The father of the plaintiffs i.e Hanuamanthaiah who is also the brother of Chikkarasappa had died long back. Though the date of death of Hanumaiah has not been mentioned, the plaintiff No. 2 being the daughter of Hanumaiah would also not be entitled to any share in the property of her father as per the 2005 Amendment to the Hindu Succession Act, 1956. Hence in view of the reasons mentioned above, the plaintiffs have failed to prove that the plaintiffs and defendant No's 1 to 8 are the joint family members and that the suit schedule properties are their joint family properties, and also that they are entitled for partition and separate possession of their share in the suit schedule properties. **Accordingly Issue Nos. 1 to 3 are answered in the negative.**

22. Issue No 4:- In view of my findings to point Nos.1 and 2 and the reasons stated therein, I proceed to pass the following:-

ORDER

The suit of the plaintiffs is dismissed with costs.

Draw decree accordingly.

(Dictated to the Stenographer, transcribed by him, corrected, signed and then pronounced by me in the open court on this the **5th Day of October 2018**)

**Smt. Yermal Kalpana
Sr. Civil Judge & J.M.F.C.
Magadi.**

ANNEXTURE

1. List of the witnesses examined by the plaintiffs.

P.W.1 M. Shivakumar 13.04.2016

Addl. Chief of PW1 M. Shivakumar 16.02.2018

2. List of the witnesses examined by the defendants.

Nill

3. List of the documents exhibited by the plaintiffs:-

Ex.P1 Genealogical tree

Ex.P2 to 8 RTC extracts.

Ex.P9 is the Death certificate

Ex.P10 Will deed

Ex.P11 Will deed.

Ex.P12 SPA executed by plaintiff.

4. List of the documents exhibited by the defendants

Nill

**Sr. Civil Judge & J.M.F.C.
Magadi.**

Prs/-.