

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

PRESENT

Sri. K. Mahadeva. B.A, LL.B.,
Senior Civil Judge and J.M.F.C.,Magadi

DATED THIS 4th DAY OF JANUARY, 2016.

:: O.S.NO.1019/2014 ::

Plaintiffs:-

1. Smt. Kempahanumakka W/o Doddathimmaiah,
D/o late Channabyrappa @ Channabyregowda,
59 years, R/o Chowdasandra village,
Honnasandra post, Kasaba Hobli,
Nelamangala Taluk, Bangalore Rural District.
2. Smt. Gangalakshamma W/o Naga Arasappa,
D/o late Channabyrappa @ Channabyregowda,
56 years, R/o Ravathanahalli village,
Kithanahalli post, Dasanapura Hobli,
Bangalore North Taluk.

(By **Shri. P.R.H.**Advocate)

-V/S-

Defendants:-

1. Sri. Ramakrishnaiah @ Ramakrishnappa
S/o late Channabyrappa @ Channabyregowda,
64 years,
2. Sri. Byrahanumegowda S/o Ramakrishnaiah, 35 years,

Both are R/o Thorehosapalya village, Hamlet of
Bassavenahally, Solur Hobli, Magadi Taluk.
3. Smt. Kamala D/o Ramakrishnaiah W/o Thimmegowda,
33 years, R/o Boodihal village, Kasaba Hobli,
Magadi Taluk.

4. Smt. Hemavathi D/o Ramakrishnaiah, W/o Jayaram, 32 years, R/o Mandigere village, Kasaba Hobli, Nelamangala Taluk.
5. Kum. Jayashree D/o RAMakrishna, 8 years, Minor represented by her mother as a natural guardian Smt. Hema W/o Ramakrishnaiah, R/o Thorehosapalya village, Hamlet of Bassavenahally, Solur Hobli, Magadi Taluk.
6. Sri. Krishnappa S/o Gangaiah, 55 years, R/o Thorehosapalya village, Hamlet of Bassavenahally, Solur Hobli, Magadi Taluk.

(Deft.No.1 by Sri. M.V.S.Advocate.)
(Deft.No.2 by Sri. R.K.Advocate)
(Deft.No.3: Ex-parte)
(Deft.No.4 by Sri.L.P.S.Advocate)

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Date of institution of the suit: 10.12.2014.

Nature of the suit: Partition and Declaration

Date of recording of evidence: 04.11.2015.

Date on which judgement was: 04.01.2016.
pronounced:

Total duration.

Year/s.	Month/s.	Day/s.
01.	00.	24.

(K. MAHADEVA),
SENIOR CIVIL JUDGE.
MAGADI.

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J U D G E M E N T

The plaintiffs have filed this suit against the defendants for the relief of partition and separate possession of their 2/3rd share in the schedule properties and also for declaration that the WILL's dtd: 10.11.2005 and 17.11.2005 and sale-deed dtd: 30.10.2006 are null and void and not binding on the rights of the plaintiffs over the suit schedule properties.

2. Brief averments of the plaint are as under:-

The plaintiffs contend that, Channabyrappa @ Channabyregowda and Muddarangamma were the husband and wife. They had one son and two daughters. The said Channabyrappa @ Channabyregowda died on 27.11.2009. The said Muddarangamma died in the year 2004. The plaintiffs and defendant No.1 are their legal heirs to succeed to the properties of Channabyrappa @ Channabyregowda and Muddarangamma. The 1st defendant has got two wives. One Jayamma is the first wife and Hema is the second wife. The 1st wife Jayamma is no more. The said Jayamma had one son and two daughters, namely Byrahanumegowda, Kamala and Hemavathi. They are the defendants 2 to 4. The 2nd wife Hema has got only one daughter namely Jayashree. She is the defendant No.5. The defendant No.5 is minor. As such she is represented by her mother Hema.

3. The suit properties are as under:-

Sl.No.	Sy.No.	Extent	Place
1	83/12A	2 acres 4 gts	Basavenahally village, Solur Hobli, Magadi Taluk.
2	83/13	10 gts	-do-
3	83/20	13 gts	-do-
4	82/27	04 gts	-do-
5	83/10	11 gts	-do-
6	65/5	2 gts	-do-
7	82/25	02 gts	-do-
8	82/21	36 gts	-do-
9	82/10	07 gts	-do-
10	86	3 acres 12 gts.	-do-
11	89/1	1 acre 08 gts	Pemanahalli village, Solur Hobli, Magadi Taluk.
12	161/3B	7.15 gts	Nelamangala village, Kasaba Hobli, Nelamangala Taluk.

13. Sy No.19-2, measuring 1 acre 39 gts, situated at Beedhanapalya village, Kasaba Hobli, Nelamangala Taluk.

14. House property bearing katha No.759/10 situated at Thorehosapalya village, Solur Hobli, Magadi Taluk.

4. The above said properties are the ancestral and joint family properties of the plaintiffs and the 1st defendant. They are in joint possession of the properties and they are the suit schedule properties. That after the death of Channabyrappa @ Channabyregowda, the 1st defendant has become the kartha of the family. The plaintiffs and the 1st defendant are the joint family members. There is no partition between the plaintiffs and the 1st defendant. The 1st defendant has created sale-deeds behind the back of the plaintiffs. The 6th

defendant has obtained sale-deed from 1st defendant on 30.10.2006 in respect of property bearing Sy No. 83/10 measuring 11 gts and Sy No. 82/10 measuring 7 gts. They are suit item No.5 and 9 properties. The said transactions do not bind the rights of the plaintiffs. The 1st defendant being the kartha of the joint family, taking the advantage of the situation has colluded with the revenue officials and got entered his name in respect of Sy No. 19/2 measuring 1 acre 39 gts and trying to alienate the said property. The 4th defendant namely Hemavathi had filed a suit in O.S.No. 27/2006 against her mother and sons. The plaintiffs were not made as parties in the said suit. The plaintiffs have filed an application in that suit and got impleaded themselves as the defendant No.4 and 5 in the said suit. The plaintiff of that suit namely Hemavathi had filed a memo and got dismissed the suit. The defendants 4 and 5 have filed an application to transpose them as plaintiffs. The said application was allowed and they are permitted to come as plaintiff No.2 and 3. At that time the court has raised the objections with regard to the pecuniary jurisdiction and because of that the court has ordered to return the plaint with liberty to present the same before the proper court. The suit properties are the ancestral and joint family properties. The plaintiffs and 1st defendant have 1/3rd share each in the suit properties. The defendants 2 to 5 have got only right in the share to be allotted to the 1st defendant. The father of the plaintiffs namely Channabyrappa @ Channabyregowda and the 2nd defendant colluded themselves and created the alleged WILL's dtd:10.11.2005 and 17.11.2005 in favour of the 2nd

defendant in order to deprive the rights of the plaintiffs over the suit item No.1,3,5, 8 and 11 properties. The said WILL's do not binds the rights of the plaintiffs over the said properties. The sale-deed executed by defendant No.1 in favour of defenant No.6 do not binds the rights of the plaintiffs. The cause of action for the suit arose on 23.02.2006 based on that the 4th defendant of this suit had filed a suit in O.S.No. 27/2006. The present plaintiffs have got impleaded as parties to the said suit. The said suit has been returned to present the same befoe the proper court. As such they have filed this suit and prays for the decree of the suit.

5. Suit summons have been issued to the defendants. The defendant No.1 has appeared through his advocate. The defendant No.2 has appeared through his advocate. The defenadant No.4 has appeared through her advocate. The defendants 3 and 6 remained absent. Hence, they have been placed ex-parte. The defendant No.5 has appeared through her natural guardian mother Hema.

6. The defendants 1, 2, 4 and 5 have not filed their written statetements. The defendants 3 and 6 are Ex-parte. Hence, the case has been posted for plaintiffs evidence.

7. The 1st plaintiff has got examined herself as P.W.1. She has got marked Ex.P.1 to P.19 documents and she has closed her side of evidence. The defendants 3 and 6 are Ex-parte. The other defendants have not filed their written

statements. Hence, their evidence was taken as no evidence on 04.11.2015 and posted the case for arguments.

8. Heard the learned advocate for the plaintiffs on 04.12.2015. Perused the entire file.

9. The points that arise for my consideration are:-

1. Whether the plaintiffs prove that they and the defendant No.1 are the joint family members and the suit properties are their joint family properties.?

2. Whether the plaintiffs prove that WILL's dtd: 10.11.2005 and 17.11.2005 executed by Channabyrappa @ Channabyregowda in favour of 2nd defendant are null and void and not binding on the rights of the plaintiffs over the suit properties in respect of suit Item No. 1,3,5,8 and 11 properties?

3. Whether the plaintiffs prove that the sale-deed dtd: 30.10.2006 executed by 1st defendant in favour of defendant No.6 in respect of suit item No. 5 and 9 properties are null and void and not binding on the rights of the plaintiffs?

4. Whether the plaintiffs are entitle for partition and separate possession of their 1/3rd share each in the suit properties?

5. Whether the plaintiffs prove that they are entitle for the releif sought for in this suit?

6. To what order or Decree?

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

Point No.1	In the partly affirmative
Point No.2	In the affirmative

Point No.3	In the negative
Point No.4	In the partly affirmative
Point No.5	In the partly affirmative
Point No.6	As per final order for the following

REASONS

11. **POINTS NO. 1 to 5:-** For the sake of convenience and also in order to avoid repetition of facts, I have taken these points together for my discussion.

12. It is the case of the plaintiffs that Channabyrappa @ Channabyregowda and Muddarangamma were the husband and wife. They had one son and two daughters. The said Channabyrappa @ Channabyregowda died on 27.11.2009. The said Muddarangamma died in the year 2004. The plaintiffs and defendant No.1 are their legal heirs to succeed to the properties of Channabyrappa @ Channabyregowda and Muddarangamma. The 1st defendant has got two wives. One Jayamma is the first wife and Hema is the second wife. The 1st wife Jayamma is no more. The said Jayamma had one son and two daughters, namely Byrahanumegowda, Kamala and Hemavathi. They are the defendants 2 to 4. The 2nd wife Hema has got only one daughter namely Jayashree. She is the defendant No.5. The defendant No.5 is minor. As such she is represented by her mother Hema.

13. The suit properties are the ancestral and joint family properties of the plaintiffs and the 1st defendant. They are in joint possession of the properties and they are the suit

schedule properties. That after the death of Channabyrappa @ Channabyregowda, the 1st defendant has become the kartha of the family. The plaintiffs and the 1st defendant are the joint family members. There is no partition between the plaintiffs and the 1st defendant. The 1st defendant has created sale-deeds behind the back of the plaintiffs. The 6th defendant has obtained sale-deed from 1st defendant on 30.10.2006 in respect of property bearing Sy No. 83/10 measuring 11 gts and Sy No. 82/10 measuring 7 gts. They are suit item No.5 and 9 properties. The said transactions do not bind the rights of the plaintiffs. The 1st defendant being the kartha of the joint family, taking the advantage of the situation has colluded with the revenue officials and got entered his name in respect of Sy No. 19/2 measuring 1 acre 39 gts and trying to alienate the said property. The 4th defendant namely Hemavathi had filed a suit in O.S.No. 27/2006 against her mother and sons. The plaintiffs were not made as parties in the said suit. The plaintiffs have filed an application in that suit and got impleaded themselves as the defendant No.4 and 5 in the said suit. The plaintiff of that suit namely Hemavathi had filed a memo and got dismissed the suit. The defendants 4 and 5 have filed an application to transpose them as plaintiffs. The said application was allowed and they are permitted to come as plaintiff No.2 and 3. At that time the court has raised the objections with regard to the pecuniary jurisdiction and because of that the court has ordered to return the plaint with liberty to present the same before the proper court. The suit properties are the ancestral and joint family properties. The plaintiffs and 1st

defendant have 1/3rd share each in the suit properties. The defendants 2 to 5 have got only right in the share to be allotted to the 1st defendant. The father of the plaintiffs namely Channabyrappa @ Channabyregowda and the 2nd defendant colluded themselves and created the alleged WILL's dtd:10.11.2005 and 17.11.2005 in favour of the 2nd defendant in order to deprive the rights of the plaintiffs over the suit item No.1,3,5, 8 and 11 properties. The said WILL's do not binds the rights of the plaintiffs over the said properties. The sale-deed executed by defendant No.1 in favour of defenant No.6 do not binds the rights of the plaintiffs. The cause of action for the suit arose on 23.02.2006 based on that the 4th defendant of this suit had filed a suit in O.S.No. 27/2006. The present plaintiffs have got impleaded as parties to the said suit. The said suit has been returned to present the same befoe the proper court. As such they have filed this suit and prays for the decree of the suit.

14. In support of her case, the 1st plaintiff has got examined herself as P.W.1. She has deposed to the plaint averments and she prays to decree the suit.

15. She has got marked Ex.P.1 to P.19 documents.

Ex.P.1 is the Genealogical tree.

Ex.P.2 is the RTC of Sy No.83/12A of Basavenahalli village for the year 2014-15. It is in the name of Channabyraiah for 2 acres 4 gts.

Ex.P.3 is the RTC of Sy No.83/13 of Basavenahalli village for the year 2014-15. 10 gts of land is in the name of Channabyrappa.

Ex.P.4 is the RTC of Sy No.83/20 of Basavenahalli village for the year 2014-15. 13 gts of land is in the name of Channabyrappa.

Ex.P.5 is the RTC of Sy No.82/27 of Basavenahalli village for the year 2014-15. 4 gts of land is in the name of Channabyrappa.

Ex.P.6 is the RTC of Sy No.83/10 of Basavenahalli village for the year 2014-15. 11 gts of land is in the name of Krishnappa.

Ex.P.7 is the RTC of Sy No.65/5 of Basavenahalli village for the year 2014-15. 2 gts of land is in the name of Channabyrappa.

Ex.P.8 is the RTC of Sy No.82/25 of Basavenahalli village for the year 2014-15. 2 gts of land is in the name of Channabyrappa.

Ex.P.9 is the RTC of Sy No.82/21 of Basavenahalli village for the year 2014-15. 36 gts of land is in the name of Channabyrappa.

Ex.P.10 is the RTC of Sy No.82/10 of Basavenahalli village for the year 2014-15. 7 gts of land is in the name of Krishnappa.

Ex.P.11 is the RTC of Sy No.86 of Basavenahalli village for the year 2014-15. 3 acres 12 gts is in the name of Channabyrappa.

Ex.P.12 is the RTC of Sy No.89/1 of Pemmanahalli village for the year 2014-15. 1 acre 6.1/2 gts of land is in the name of Channabyrappa.

Ex.P.13 is the RTC of Sy No.161/3B of Nelamangala village for the year 2014-15. 7 acre 15 gts of land is in the name of Channabyregowda.

Ex.P.14 is the RTC of Sy No.19/2 of Beedhanapalya village for the year 2014-15. 1 acre 39 gts of land is in the name of Ramakrishnaiah the 1st defendant.

Ex.P.15 is the D.C.B.Register extract of katha No. 759/10. It is in the name of Channabyrappa.

Ex.P.16 is the copy of WILL dtd: 17.11.2005 executed by Channabyraiah @ Channabyrappa in favour of R. Byrahanumegowda in respect of property bearing Sy No. 83/12 measuring 2 acres 4 gts, Sy No. 83/20 measuring 13 gts, 36 gmts, Sy No. 65/2 measuring 2 acres and Sy No. 89/11 measuring 1 acre 6.1/2 gts and Sy No. 191/2 measuring 2 acres 13 gts in favour of Smt. Muddarangamma W/o Channabyraiah @ Channabyrappa.

Ex.P.17 is the copy of the order sheet of O.S.No. 27/2006.

Ex.P.18 is the copy of the amended plaint of O.S.No. 27/2006.

Ex.P.19 is the copy of sale-deed dtd: 30.10.2006. According to this document Channabyrappa has executed sale-deed in favour of Krishnappa for Rs.27,000/- in respect of Sy No. 82/10 measuring 7 gts and Sy No. 83/0 measuring 11 gts.

16. The defendants 1,2,4 and 5 have not filed their written statements and not adduced any evidence. The defendants 3 and 6 are Ex-parte. They have not challenged the evidence of plaintiffs. Though the defendants have not filed their written statement and contested the suit, it is the duty of the plaintiffs to establish their case. On this background, I am considering the available evidence here onwards.

17. The plaintiffs have contended that they and defendant No.1 are the children of Channabyrappa @

Channabyregowda. The suit properties were beloned to the said Channabyrappa. There was no partition among the plaintiffs and the 1st defendant. The plaintiffs are entitle for 1/3rd share in the suit properties along with defendant No.1. After the death of Channabyregowda and Rangamma, the 1st defendant became the kartha of the family and exercised his right as a kartha of the joint family and trying to sell suit properties. The sale-deed dtd: 30.10.2006 is not binding on the rights of the plaintiffs. They have also contended that their father has executed Wills dtd: 10.11.2005 and 17.11.2005 infavour of the 2nd defendant. The said Wills are not binding on their rights.

18. In support of their case, the 1st plaintiff has got examined herself as P.W.1 and deposed to the plaint averments and prays to decree the suit.

19. The plaintiffs have got marked Ex.P.2 in respect of suit item No. 1 property, Ex.P.3 in respect of suit item No. 2 property, Ex.P.4 in respect of suit item No. 3 property, Ex.P.5 in respect of suit item No. 4 property, Ex.P.7 in respect of suit item No. 6 property, Ex.P.8 in respect of suit item No. 7 property, Ex.P.9 in respect of suit item No. 8 property, Ex.P.11 in respect of suit item No. 10 property, Ex.P.12 in respect of suit item No. 11 property and Ex.P.13 in respect of suit item No. 12 property, Ex.P.14 in respect of suit item No. 13 property, Ex.P.15 in respect of suit item No. 14 property, The said documents are standing in the name of Channabyrappa. The plaintiffs have claimed that the said Channabyrappa was

their father. The defendants have not challenged the said contention of the plaintiffs. Therefore it is to be acceptable that the suit item No. 1 to 4, 6 to 8, 10 to 14 are the joint family properties of the plaintiffs and the defendant No.1. The said documents do not disclose the partition between the plaintiffs and the defendant No.1. Therefore it is to be considered that there was no partition of the said properties among the plaintiffs and the defendant No.1. Therefore they are to be considered as the joint family properties of plaintiffs and the defendant No.1.

20. The plaintiffs have got marked Ex.P.6 in respect of suit item No. 5 property and Ex.P.10 in respect of suit item No. 9 property. They have produced Ex.P.19 in respect of said properties. The Ex.P.19 discloses that Channabyrappa has executed sale-deed in respect of suit item No.5 and 9 properties on 30.10.2006 in favour of defendant No.6 for Rs.27,000/-. The father of the plaintiffs has executed the sale-deeds in favour of defendant No.6 during his life time as the kartha of the joint family for the family necessities. When the father of the plaintiffs had sold the said properties for the family necessities, it can not be said that the father of the plaintiffs has sold the said properties for different purposes and the said sale-deeds does not binds the rights of the plaintiffs. Since the father of the plaintiffs has sold the said properties for the family necessity in favour of defendant No.6, the said sale deeds binds the rights of the plaintiffs and defendant No.1 to 5 over the said properties. Therefore the contention of the plaintiffs with regard to the suit item No.

5 and 9 properties are not acceptable one. The sale-deed executed by Channabyregowda binds the plaintiffs and the defendant No.1 to 5 in respect of suit item No. 5 and 9 properties. The Ex.P.19 establishes the same and based on Ex.P.19 the defendant No.6 has got changed the katha of the suit item No.5 and 9 properties to his name. The Ex.P.6 and P.10 documents discloses the same. Therefore the defendant No.6 has purchased the suit item No.5 and 9 properties for the family necessities of the father of the plaintiffs. Therefore the defendant No.6 is to be considered as bonafide purchaser for valid consideration. Therefore the claim of the plaintiffs over suit item No. 5 and 9 properties is not acceptable one. The said properties can not be considered as the joint family properties of plaintiffs and the defendant No.1. Therefore the plaintiffs are not entitle for the relief in respect of suit item No.5 and 9 properties. Therefore the available evidence establishes that the suit item No. 1 to 4, 6 to 8, 10 to 14 properties are the joint family properties and the plaintiffs are entitle for their 1/3rd share in the said properties. Therefore, I am holding **point No.1,4 and 5 in the partly affirmative, issue No.2 in the affirmative and issue No. 3 in the negative.**

21. POINT NO.6:- In view of my findings on point No. 1 to 5 and the reasons stated therein, I proceed to pass the following:-

ORDER

The suit of the plaintiffs is decreed in part.

The suit of the plaintiffs is decreed only in respect of suit item No. 1 to 4, 6 to 8 and 10 to 14 properties.

The suit of the plaintiffs is dismissed in respect of suit item No.5 and 9 properties and against the defendant No.6.

The plaintiffs are entitle for partition and separate possession of their 1/3rd share each in the suit item No.1 to 4, 6 to 8 and 10 to 14 properties.

The defendants No.1 to 5 are jointly entitle for 1/3rd share in the suit item No.1 to 4, 6 to 8 and 10 to 14 properties.

The Wills dtd: 10.11.2005 and 17.11.2005 executed by Channabyrappa in favour of defendant No.2 are not binding on the rights of the plaintiffs over the said proeprties.

No order as to costs.

Draw Preliminary decree accordingly.

(Dictated to the Stenographer, transcribed by him, corrected, signed and then pronounced by me in the open court on this the 4th day of January 2016.)

(**K. Mahadeva**),
Sr. Civil Judge & J.M.F.C.
Magadi.

ANNEXTURE

1. List of the witnesses examined by the plaintiffs.

P.W.1 Kempahanumakka 04.11.2015.

2. List of the witnesses examined by the defendants.

Nil

3. List of the documents exhibited by the plaintiffs.

Ex.P.1	Genealogical tree.
Ex.P.2 to 14	RTC extracts.
Ex.P.15	D.C.B.Register extract.
Ex.P.16	Copy of WILL dtd: 17.11.2005
Ex.P.17	Copy of the order sheet of O.S.No. 27/2006.
Ex.P.18	copy of the amended plaint of O.S.No. 27/2006.
Ex.P.19	Copy of sale-deed dtd: 30.10.2006.

4. List of the documents exhibited by the defendants.

Nil

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

Dm/-.

