

KASM300012992018



**IN THE COURT OF THE ADDITIONAL SENIOR CIVIL
JUDGE AND JMFC, BHADRAVATHI**

Dated this the 25th day of November, 2022

PRESENT: Smt. V.N. Milana, B.A.L., LL.B.
Addl. Senior Civil Judge and JMFC,
Bhadravathi.

O.S. No.126/2018

Plaintiff : Sri. L.V.Gnaneshwara S/o
late C.L.Vittal Rao, Aged about 51
years, Tailor by profession, R/o
Door No.573, I Stage, SM Krishna
Nagar, Davanagere.

(By Sri.TSS, Advocate)

-Vs-

Defendants : 1) C.V.Vijaya kumar S/o late
C.L.Vittal Rao, Aged about 50
years,

2. Sri. Vinayaka S/o late C.L.Vittal
Rao, Aged about 40 years,

Both are Tailor by Profession, R/o
Namdev Cloth Stores, Honnali,
Davanagere District.

3. Smt. Pushpavathi D/o late C.L.Vittal Rao, Aged about 56 years, R/o Choradi Village, Kumsi Post, Shivamogga Taluk.

4. Smt. Baby Rukmini D/o late C.L.Vittal Rao, Aged about 50 years, W/o H.V. Pandurangappa, R/o Namdev Cloth Stores, Honnali, Davanagere District.

5. Smt. C.S.Vimala Bai Dead by her L.Rs.

5(a) C.N. Nagaraj @ Raja Rao, Aged about 60 years, R/o II Cross, Dhanavanthri Ayurvedic Center, J.P.N.Road, Shivamogga.

6. Rathna Bai Dead by her L.Rs.

6(a) Annappa S/o Subba Rao, Aged about 50 years

6(b) Narayana Rao S/o C.Subba Rao, Aged about 60 years

Both are R/o Shivaji Road, Nyamathi Town, Honnali Taluk, Davanagere District.

7. Smt. Saraswathi Bai

Dead by her L.Rs.

7(a) Vinayaka S/o Anantha Rao, Aged about 65 years, R/o Vinu Tailors, JC Road, Now SMP Road, Sagar, Shivamogga District.

7(b) Sri. Sathyanarayana Rao S/o Anantha Rao, Aged about 53 years, R/o Vinu Tailors, JC Road, Now SMP Road, Sagar, Shivamogga District.

8. Smt. Sulochanamma D/o late Ruma Bai, Aged about 70 years, W/o B.K.Manjunath, No.119, Narayanapura, Sunkal Farm Extension, Wilson Garden, Bangalore-560 002.

(D1 to 3 by Sri. NRB Advocate
D4, D5(a), D6(a) & (b), D7(a) & (b), D8- Exparte)

Date of institution of the Suit : 06.10.2018

Nature of suit : Partition and Separate Possession and Permanent Injunction.

Date of commencement of Recording of evidence : 04.07.2019

Date on which the Judgment was Pronounced : 25.11.2022

Total Duration:	Year/s	Month/s	Day/s
	04	01	19

Addl. Sr. Civil Judge & JMFC
Bhadravathi.

J U D G M E N T

Plaintiff has instituted this suit for partition and separate possession and for permanent injunction.

2. As per the plaint averments, it is pleaded that his father C.L. Vittal Rao had filed O.S. No. 427/1989 on the file of Civil Judge and JMFC Bhadravathi seeking the relief of declaration that Vittal Rao is the owner of the suit schedule property and gift deed dated: 27-10-1987 is null and void. During the pendency of O.S. 427/1989 the father of the plaintiff died and his son, the present plaintiff proceeded with the case and due to non-prosecution the said case was dismissed. It is further submitted that his father Vittal Rao preferred mis-petition No. 13/2001 seeking for restoration of suit. During the pendency of miscellaneous proceedings the plaintiff's father Vittal Rao and his brother Narayana Rao died. The legal heirs of C. Narayana Rao and Vittal Rao were impleaded as parties and after contested the petition the Trial Court dismiss the

petition. Aggrieved by the same Miscellaneous Appeal No.12/2010 has preferred by the plaintiff. The said appeal is dismissed for non-prosecution. The petitioner has filed an application U/Order 9 rule 4 of CPC and the same was also dismissed on 19-11-2012. It is further stated that in view of death of many more heirs in continuation of O.S. No. 427/1989 for filing subsequent mis Appeal and Misc. petition for restoration of original suit and there is no adjudication of the matter on merits. It is further stated that the suit schedule property is joint family property and not yet partition between the successors. It is further submitted that the plaintiff made his best effort to get the share out of the suit schedule property, but the defendant refused to give the share after the disposal of the appeal on 05-06-2018. Hence, this suit.

3. On service of suit summons, the defendant No.1 to 3 appeared through their counsel but did not choose to file written statement. Defendant No.4, 5(a), 6(a) (b), 7(a),(b)

and D8 have failed to appear before the court and hence they were placed ex-parte.

4. After perusal of the records of the case, the following points would arise for my consideration:

1. Whether the suit is barred by limitation?
2. Whether the plaintiff is entitled to the relief of Partition and Separate Possession ?
3. What Decree or Order?

5. In order to prove his case, plaintiff is examined himself as PW.1 and got marked Ex.P1 to Ex.P31 and closed his side.

6. Heard the learned Counsel for the Plaintiff.

7. My finding to the above points are as follows:

- | | | |
|-------------------|----------|--|
| Point No.1 | : | In the Affirmative |
| Point No.2 | : | In the Negative |
| Point No.3 | : | As per the final order for the following: |

REASONS

8. **Point No.1** : It is the specific case of the plaintiff that his father C.L. Vittal Rao had filed O.S. No. 427/1989 on the file of Civil Judge and JMFC Bhadravathi seeking the relief of declaration that Vittal Rao is the owner of the suit schedule property and gift deed dated: 27-10-1987 is null and void. During the pendency of O.S. 427/1989 the father of the plaintiff died and his son, the present plaintiff proceeded with the case and due to non-prosecution the said case was dismissed. It is further submitted that his father Vittal Rao preferred mis-petition No. 13/2001 seeking for restoration of suit. During the pendency of miscellaneous proceedings, the plaintiff's father Vittal Rao and his brother Narayana Rao died. The legal heirs of C. Narayana Rao and Vittal Rao were impleaded as parties and after contested the petition the Trial Court dismissed the petition. Aggrieved by the same, Miscellaneous Appeal No.12/2010 has preferred by the plaintiff. The said appeal is dismissed for non-prosecution. The petitioner has filed

an application U/Order 9 rule 4 of CPC and the same was also dismissed on 19-11-2012. It is further stated that in view of death of many more heirs in continuation of O.S. No. 427/1989 for filing subsequent mis Appeal and Misc. petition for restoration of original suit and there is no adjudication of the matter on merits. It is further stated that the suit schedule property is joint family property and not yet partitioned between the successors. It is further submitted that the plaintiff made his best effort to get the share out of the suit schedule property, but the defendants refused to give the share after the disposal of the appeal on 05-06-2018. Hence, this suit.

9. The plaintiff in order to prove his case, examined himself as PW1 and filed affidavit in lieu of oral evidence wherein he has reiterated the plaint averments and got marked Ex.P1 to Ex.P31. Ex.P.1 is the certified copy of the order passed in MA 12/2010, Ex.P.2 is the RTC extract for the year 2017-18, Ex.P.3 is the mutation register extract,

Ex.P.4 is the RTC extracts in respect of Sy.No.100, Ex.P.5 is the RTC extract in respect of Sy.No.100/P4, Ex.P.6 is the mutation register extract, Ex.P.7 is the encumbrance certificate, Ex.P.8 is the mutation register extract, Ex.P.9 is the RTC extract of Sy.No.25/2, Ex.P.10 is the RTC extract of Sy.No.25/1, Ex.P.11 is the RTC extract of Sy.No.25/3, Ex.P.12 is the RTC extract of Sy.No.25, Ex.P.13 is the RTC extract of Sy.No.25/2, Ex.P.14 is the RTC extract of Sy.No.25/1, Ex.P.15 and 16 are the RTC extracts of Sy.No.25, Ex.P.17 is the RTC extract of Sy.No.25/2, Ex.P.18 is the encumbrance certificate, Ex.P.19 is the RTC extract of Sy.No.100/P4, Ex.P.20 is the mutation register extract, Ex.P.21 is the RTC extract of Sy.No.54, Ex.P.22 is the tax paid receipt, Ex.P.23 is the mutation register extract for the year 1995-96, Ex.P.24 and 25 are the certified copy of plaint and written statement in O.S. 427/1989, Ex.P.26 is the certified copy written statement in O.S. 44/1989, Ex.P.27 is the certified copy of written statement in O.S. 427/1989, Ex.P.28 is the sale deed dated

27.12.1966, Ex.P.29 is the copy of objection issued by Vittal Rao to Holehonnur Gram Panchayath, Ex.P.30 is the genealogical tree, Ex.P.31 is the RTC extract of Sy.No.54.

10. Having regard to the pleading urged, the first question for consideration is whether the suit filed by the plaintiff was barred by Limitation. There is no dispute that the parties to the suit are Hindus and are governed by Mitkashara Law. The plaintiff has claimed partition in respect of joint family property.

11. In the instant case, it is the specific contention of the plaintiff is that his father had filed suit against defendants and the said suit was dismissed as abated. It is further submitted that his father Vittal Rao preferred mis-petition No. 13/2001 seeking for restoration of suit. During the pendency of miscellaneous proceedings, the plaintiff's father Vittal Rao and his brother Narayana Rao died. The legal heirs of C. Narayana Rao and Vittal Rao were impleaded as parties and after contested the petition the

Trial Court dismissed the petition. Aggrieved by the same, Miscellaneous Appeal No.12/2010 has preferred by the plaintiff. The said appeal is dismissed for non-prosecution. The petitioner has filed an application U/Order 9 rule 4 of CPC and the same was also dismissed on 19-11-2012. Counting the period of twelve years from 1989, the limitation for filing of the suit in the present case would have expired on 2001. The suit was filed on 2018. therefore, the suit was barred by time.

12. It is specifically averred in the plaint that the father of the plaintiff had filed suit in O.S.427/1989 and the plaintiff came to know about the said suit in the year 2001, when the father of the plaintiff instituted O.S.427/1989 and plaintiff has filed MA 12/2010 and asserted his right on the basis of suit schedule property is the joint family property and not yet partitioned. It is submitted that, as so averred in the plaint, till 2010, the suit cannot be said to be barred by law of limitation. But, in this case the plaintiff has stated that the cause of action arose on 01.06.2018 i.e.

the date of disposal of M.A. It is admitted that neither the plaintiff nor his father, during his life time has challenged M.A.

13. I would like to Rely upon the decision of Hon'ble Supreme Court in the case of **Church of Christ Charitable Trust and Educational Charitable Society Vs. Ponniyamman Educational Trust (2012) 8 SCC 706**, the Hon'ble Supreme Court in Para 13 has observed and held as under:

“ While scrutinizing the plaint averments, it is the bounden duty of the trial Court to ascertain the materials for cause of action. The cause of action is a bundle of facts which taken with the law applicable to them gives the plaintiff the right to relief against the defendant. Every fact which is necessary for the plaintiff to prove to enable him to get a decree should be set out in clear terms. It is worthwhile to find out the meaning of the words “Cause of action”. A cause of action must include some act done by the defendant since in the absence of such an act. No cause of action can possibly accrued.”

14. In the case of **Ram Singh Vs. Gram Panchayath Mehal Kalan (1986) 4 SCC 364**, the Hon'ble Supreme

Court has observed and held that “ when the suit is barred by any law, the plaintiff cannot be allowed to circumvent that provision by means of clever drafting so as to avoid mention of those circumstances, by which the suit is barred by law of limitation.”

15. In this case on hand, the plaintiff has filed this suit after lapse of 29 years. Even from the averments in the plaint, it appears that during these 29 years i.e. the period from 1989 till 2018 the suit property is joint family property not yet partitioned between the successors. Therefore, considering the averments in the plaint and the bundle of facts stated in the plaint, I am of the opinion that by clever drafting the plaintiff has tried to bring the suit within the period of limitation which otherwise is barred by law of limitation.

16. It is relevant to note here that on perusal of the plaint, it is no where stated about the cause of action to file this suit. Though the plaintiff has stated that the cause of

action arose when the MA dismissed by this Court, the above said date is not considered as cause of action to file this present suit. The proper remedy is available to the plaintiff is to challenge the order passed in MA and not by filing this suit. Accordingly, I answer Point No.1 in the '**Affirmative**' and Point No.2 in the '**Negative**'.

17. **Point No.3:** In view of my discussion made supra, I proceed to pass the following:

ORDER

Suit of the plaintiff is hereby dismissed.

On considering relationship between the parties, there is no order as to costs.

Draw decree accordingly.

(Directly dictated to the stenographer to the computer, and then corrected and pronounced by me in the open court on this the 25th day of November, 2022).

(V.N. Milana)
Addl. Sr. Civil Judge & JMFC,
Bhadravathi.

ANNEXURE**WITNESS EXAMINED FOR THE PLAINTIFF:**

PW-1 : L.V.Gnaneshwara

WITNESS EXAMINED FOR THE DEFENDANTS:

-Nil-

DOCUMENTS EXHIBITED FOR THE PLAINTIFF:

Ex.P1	:	C/c of order passed in M.A.12/2020
Ex.P2	:	RTC extract
Ex.P3	:	C/c of Mutation register extract
Ex.P4	:	C/c of RTC of Sy.No.100
Ex.P5	:	C/c of RTC of Sy.No.100/P4
Ex.P6	:	C/c of Mutation register
Ex.P7	:	C/o of Encumbrance Certificate
Ex.P8	:	C/c of Mutation register
Ex.P9	:	C/c of RTC of Sy.No.25/2
Ex.P10	:	C/c of RTC of Sy.No.25/1
Ex.P11	:	C/c of RTC of Sy.No. 25/3
Ex.P12	:	C/c of RTC of Sy.No.25
Ex.P13	:	C/c of RTC of Sy.No. 25/2
Ex.P14	:	C/c of RTC of Sy.No.25/1
Ex.P15 & 16:	:	C/c of RTC of Sy.No.25
Ex.P17	:	C/c of RTC of Sy.No.25/2
Ex.P18	:	C/c of Encumbrance Certificate
Ex.P19	:	C/c of RTC of Sy.No.100/P4
Ex.P20	:	C/c of Mutation register
Ex.P21	:	C/c of RTC of Sy.No.54
Ex.P22	:	Tax paid receipt
Ex.P23	:	C/c of Mutation register
Ex.P24 & 25:	:	C/c of plaint and WS of OS 427/1989
Ex.P.26	:	C/c of WS in O.S. 44/1989
Ex.P.27	:	C/c of WS in O.S. 427/1989

Ex.P28 : Sale Deed
Ex.P29 : Copy of Objection
Ex.P30 : Genealogical tree
Ex.P31 : RTC of Sy.No. 54

DOCUMENTS EXHIBITED FOR THE DEFENDANTS:

-NIL-

Addl. Sr. Civil Judge & JMFC.,
Bhadravathi.

Judgment pronounced in the open court
(vide separate judgment)

O R D E R

Suit of the plaintiff is partly decreed.

Plaintiff and defendant No.12 to 14, 6 to 9 altogether are entitled for 1/10th share and defendant No1 to 5, 11 are entitled 1/10th share each in the suit 'B' schedule property.

In respect of suit A schedule property is concerned the suit of the plaintiff is dismissed.

On considering relationship between the parties, there is no order as to costs.

Draw preliminary decree accordingly.

Addl. Sr. Civil Judge & JMFC.,
Bhadravathi.