

**IN THE COURT OF THE PRINCIPAL CIVIL JUDGE & J.M.F.C.,
SAGARA.**

PRESENT : *Sri. Syed Arfath Ibrahim M.,
B.A.L., LL.B.,
Prl. Civil Judge & J.M.F.C.,
Sagar.*

Dated this the 18th day of March, 2020.

ORIGINAL SUIT NO. 24/2017

PLAINTIFF :

1. Vijay S/o Late Manikya, aged about 36 years.
2. Manjunatha S/o Late Manikya, aged about 30 years.
3. Jayalakshmi S/o Late Manikya, aged about 42 years.

All are R/o : Channapura, Tyagarti Post,
Sagar Taluk, Shivamogga District.

(By Sri. S.N. Manjunatha, Adv.)

//V/s//

DEFENDANTS:

1. Smt. Jayamma W/o Late Rajappa, Major, R/o: Channapura, Tyagarti Post, Sagar Taluk, Shivamogga District.
2. Murugesappa S/o Late Gopalappa, dead by his LR's
- 2(a). Ravichandra S/o Late Murugesappa, Major, R/o: Channapura, Tyagarti Post, Sagar Taluk, Shivamogga District.
- 2(b). Smt. Shashikala W/o Gopalakrishna, Major, R/o: Bairapura, Gowtampura post, Sagar Taluk, Shivamogga District.

2(c). Smt. Yashodha W/o Vadivelu, R/o: Marammana Beedi, Holehonnuru, Shivamogga District.

2(d). Savitri S/o Late Murugesappa, Major, R/o: Channapura, Tyagarti Post, Sagar Taluk, Shivamogga District.

3. Smt. Meenakshamma W/o Subramani, Major, R/o: Turupamgote village, Subramil post, Katpadi Taluk, Velluru District, Tamilnadu.

4. Smt. Andalamma W/o Maniyappa, Major, R/o: Channapura, Tyagarti Post, Sagar Taluk, Shivamogga District.

5. Smt. Pachhamma W/o Palani, dead by her LR's

5(a). Smt. Kumari W/o Muniyappa, aged about 32 years, R/o Channapura, Tyagarti Post, Sagar Taluk, Shivamogga District.

5(b). Smt. Rajeshwari W/o Annamalai, aged about 28 years, R/o: Kanasogi, Ambiligola post, Shikaripura Taluk, Shivamogga District.

5(c). Smt. Anusuyamma W/o Venkatesha, aged about 26 years, R/o: Aragamatti, Honnali Taluk, Davangere District.

5(d). Shivakumara S/o Palani, aged about 23 years, R/o: Channapura, Tyagarti Post, Sagar Taluk, Shivamogga District.

6. Smt. Kanakamma W/o Chinnappa, dead by her LR's

6(a). Raju S/o Chinnappa, aged about 40 years, R/o: Channapura, Tyagarti Post, Anandpuram Hobli, Sagar Taluk, Shivamogga District.

6(b). Murthy S/o Chinnappa, aged about 32 years,

6(c). Ravi S/o Chinnappa, aged about 22 years,

6(d). Manjamma W/o Ramappa, aged about 42 years,

6a, b, c and d are R/o: Channapura, Tyagarti Post, Anandapuram Hobli, Sagar Taluk, Shivamogga District.

6(e) Smt Muttamma W/o Jayashankara, aged about 36 years, R/o: Kappanahalli, Shikaripura Taluk.

6(f). Smt. Nagamma W/o Sadappa, aged about 26 years, R/o: Tumarihosuru, Shikaripura Taluk, Shivamogga District.

(D1 & D2 (a) to D2(d) by Sri. H.N. Diwakar, Adv.)
(D4 by Sri. Ishwarappa Naik, Adv.)
(D3, D5(a) to D5(d), D6(a) to D6(f) placed exparte)

Date of institution of the suit	:	30.01.2017
Nature of the suit	:	Partition and Separate Possession
Date of recording of evidence	:	27.06.2018
Date of pronouncement of judgment:		18.03.2020
Total duration	:	<u>Year/s</u> <u>Month/s</u> <u>Day/s</u>
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(SYED ARFATH IBRAHIM M.)
Principal Civil Judge & J.M.F.C.,
Sagar.

:: J U D G M E N T ::

This is a suit filed by the plaintiffs seeking partition and separate possession of their 8/28th share in the suit property by metes and bounds.

2. Brief case of the Plaintiff is as hereunder:-

Plaintiffs and defendants are the members of a Hindu Joint Family to which Late Gopalappa was propositus. The suit property was granted to Gopalappa during the year 1977-78. On 21-02-1982 Hakkupatra was also issued by the Tahsildar in favor of the Gopalappa. On 17-07-1995 Gopalappa died. After his death as per the family consent 1 acre land each was entered in the name of 1st defendant and Defendant No.2A. Remaining 2acre 2 guntas of land stood in the name of late Gopalappa only. Though the RTC shows separate names but the entire suit property is still in the joint ownership of these plaintiffs and defendants. These plaintiffs requested the 1st defendant and Defendant No.2a to affect the partition in the suit property and to give them their share separated by metes and bounds. However, the defendants have refused to partition the property. Hence, the plaintiff has filed this suit.

3. Upon service of summons, the defendants 1, 2(a) to 2(d) and 4 have appeared through their counsels, but, have not filed their written statement. Other defendants have remained exparte.

4. The points that arise for my consideration are as hereunder:

1. Whether the plaintiffs are entitled for the relief's as sought in the suit?
2. What order or decree?
5. In order to prove their case, the plaintiffs examined 1 witness as P.W.1 and got marked 13 documents as Ex.P1 to Ex.P13 and closed their side of evidence. The defendants have not led any evidence.
6. Heard Sri. S.N. Manjunath, learned counsel appearing for the plaintiffs. The defendants have not canvassed their arguments.
7. My answer to the above points is as hereunder:-

Point No.1 : Partly in the Affirmative.

Point No.2 : As per final order, for the following:

:REASONS:

8. **ISSUE NO.1:-** It is the case of the plaintiffs that suit property is the joint family property of the plaintiffs and defendants. As per the plaintiffs, the suit property was granted to their grandfather Gopalappa and after his death these plaintiffs and defendants are in joint possession of the suit property as co-owners. To prove their case, they have examined 2nd plaintiff as P.W.1 and he has reiterated the entire plaint averments in his evidence. Further, to substantiate his case, he has produced RTC extract of suit property as Ex-P1, family tree is produced as Ex-P2, Akarbandh of suit property is produced as Ex-P3, land grant order is produced as Ex-P4, order of the Tahsildar is produced as Ex-P5, 4 RTC extracts are produced as Ex-P6 to Ex-P9,

grant certificate is produced as Ex-P10, M.R. No.10/84-85 is produced as Ex-P11, survey sketch is produced as Ex-P12, Index of Land in respect of Sy.No. 43 is produced as Ex-P12. The entire evidence of PW1 has gone unchallenged. Ex-P4 shows that the suit property was originally granted to Gopalappa. Ex-P7 to Ex-P9 RTC extracts clearly show that for the period 1985 to 1994 the suit property stood individually in the name of Gopalappa. Ex-P10 also shows that the land grant certificate in respect suit property was also given in the name of Gopalappa. All these documents clearly show that the suit property was granted to Gopalappa. Further, from the documents it is also clear that Gopalappa is dead. As such, these plaintiffs and the defendants are the joint owners of the suit property. As such, going by the oral as well as documentary evidence, this Court does not find any reason to disbelieve the evidence of plaintiffs. Accordingly, this Court holds that the suit property is the joint family property of plaintiffs and defendants herein.

9. As per the plaintiffs, the suit property is joint family property and there is no partition by metes and bounds in the suit property. This aspect has also gone unchallenged. Though the names of 1st defendant and Defendant No.2a appear in RTC to an extent of 1 acre each but their names are entered as per inheritance. Hence, this court holds that there was no partition in the family of the plaintiffs and defendants. Hence, going by all the above discussion, this Court holds that the plaintiffs and defendants form a Hindu Joint Family.

10. The plaintiffs have proved that the suit property is joint family property and there is no partition by metes and bounds as per law.

Hence, in view of this Court, the plaintiffs and defendants are entitled for their shares in the suit property. As the property was granted to Gopalappa it cannot be considered as Coparcenary property. It was the self acquired property of Gopalappa. The property of Gopalappa would devolve upon his heirs as per Sec.8 of Hindu Succession Act and not as per Sec.6 of Hindu Succession Act. As per Section 8 of Hindu Succession Act, after the intestate death of male Hindu, all the properties of such male Hindu devolve equally on all Class-I heirs. In this case, the Class-I heirs of Gopalappa are the plaintiffs and defendants. Going by the plaint and family tree produced as Ex-P2 the Late Gopalappa had 3 sons and 4 daughters. The plaintiffs are the children of a son of Gopalappa by name Manikya. As Gopalappa had 7 children, the suit property has to be divided into 7 parts and plaintiffs get joint $1/7^{\text{th}}$ share in the suit property. Similarly 1^{st} defendant gets $1/7^{\text{th}}$ share in the suit property, Defendant No.2(a) to 2(d) get joint $1/7^{\text{th}}$ share in the suit property, 3^{rd} and 4^{th} defendant get $1/7^{\text{th}}$ share each in the suit property, Defendant No.5(a) to 5(d) get joint $1/7^{\text{th}}$ share in the suit property and the Defendant No.6(a) to 6(f) get joint $1/7^{\text{th}}$ share in the suit property.

Accordingly, Point No.1 is answered partly in the Affirmative.

11. **POINT NO.2:-** In view of my above discussion, I proceed to pass the following:

ORDER

***Suit of the plaintiffs is hereby partly
decreed with costs as hereunder;***

It is declared that the plaintiffs are having joint 1/7th share in suit property.

Defendants shall hand over the vacant possession of joint 1/7th share of the plaintiffs by metes and bounds.

Draw preliminary decree accordingly.

(Dictated to the Stenographer directly on the laptop, corrected and then pronounced by me in the open court on this 18th Day of March, 2020.)

**(SYED ARFATH IBRAHIM M.)
Principal Civil Judge & J.M.F.C.,
Sagar.**

ANNEXURE

I. Witnesses examined on behalf of the Plaintiffs:

P.W.1 : Vijay

II. Documents exhibited on behalf of the plaintiff:

Ex.P1 : RTC Extract

Ex.P2 : Genealogical tree

Ex.P3 : Akarbandh

Ex.P4 : Land grant order

Ex.P5 : Order of Tahasildar

Ex.P6 -9 : 4 RTC Extracts

Ex.P10 : Grant Certificate

Ex.P11 : M.R. No.10/84-85

Ex.P12 : Survey Sketch

Ex.P13 : Index of Lands.

III. Witnesses examined on behalf of the defendants:

Nil

IV Documents exhibited on behalf of the defendants:

- NIL -

**Principal Civil Judge & J.M.F.C.,
Sagar.**

(Order pronounced in the Open Court, vide
separate judgment)

ORDER

***Suit of the plaintiffs is hereby partly
decreed with costs as hereunder;***

***It is declared that the plaintiffs are having
joint 1/7th share in suit property.***

***Defendants shall hand over the vacant
possession of joint 1/7th share of the plaintiffs by
metes and bounds.***

Draw preliminary decree accordingly.

Principal Civil Judge & J.M.F.C.,

Sagar.