

KABC010109162018



In the Court of the XXXIV Additional City Civil and Sessions Judge,
Bengaluru (CCH-35)

Dated this the 31st day of August, 2023

Present :-

Sri. G.Raghavendra, B.Sc., LL.B.,
XXXIV Addl. City Civil & Sessions Judge,
Bengaluru.

O.S. No.2912/2018

Between:

Mr. Ganapathi A.V.
S/o Late Veera Raghavalu Naidu
Aged about 54 years,
R/at # 308/3, Behind Balaji
Kalyana Mantapa, Hassan Circle,
Tiptur Town,
Tumkur District.

.. Plaintiff

(By Sri. K.C. Sangamesh, Advocate)

And

1. Smt. Sri Devi
D/o Late Veera Raghavalu Naidu
Aged about 67 years and
Residing at No.177, New No.26,
7Th Main, 2nd Cross,
Mathikere Extension,
Bangalore – 560 054.

2. Smt. Chandravathi
D/o Late Veera Raghavalu Naidu
Aged about 65 years and
Residing at No.58, 3rd Cross,
6th Main, Seethappa Lay-out,
Cholanayakana Halli,
Hebbal,
Bangalore – 560 032.
3. Sri. A.V. Shashidhar Kumar
S/o Late Veera Raghavalu Naidu
Aged about 57 years and
Residing at No.33, 8th Street,
Ranganathapuram, Pallikaranai Post,
Chennai – 100.
4. Sri. A.V. Raghuveer Kumar
S/o Late Veera Raghavalu Naidu
Aged about 62 years and
Residing at No.27/1, Sangam Road,
Kamaraj Road Cross,
Bangalore – 560 042.
5. Sri. A.V. Muralidhar
S/o Late Veera Raghavalu Naidu
Aged about 51 years and
Residing at No.33, 8th Street,
Ranganathapuram, Rajalakshminagar,
Pallikaranai,
Chennai – 601 302.
6. Ramesh Babu
S/o Late Veera Raghavalu Naidu
Aged about 59 years and
Residing at No.302, 3rd Floor,
'ABODH' Apartment, Veerannapalya,
Bangalore – 560 045.
7. Karthik
S/o Nandaprakash and Navarathna Lakshmi
Aged about 30 years,

8. Tejasvi Prakash
S/o Nandaprakash and Navarathna Lakshmi
Aged about 28 years,
9. Deepak Prakash
S/o Nandaprakash and Navarathna Lakshmi
Aged about 26 years,

Defendants No.7 to 9 are
R/at No.9, Sri Nilaya, 1st Floor,
2Nd Main, Gokulam Apartments,
Before G.M. Palya, New Thippasandra Post,
Bangalore – 560 075.

10. Sri. Bangaru
S/o late Sri. A.V. Suresh Babu
Aged about 32 years and
Residing at Lakshmisree,
Doddabommasandra,
Vidyaranyaapuram Post,
Bangalore – 560 097.

11. Sri. Kuladeep
S/o late Sri. A.V. Suresh Babu
Aged about 30 years and
Residing at Lakshmisree,
Apoorva Main Road, Doddabommasandra,
Vidyaranyaapuram Post,
Bangalore – 560 097.

.. Defendants

(By defendant No.5: Sri. Venkatesh S. Arbatti, advocate,
By defendant No.6: Sri. Naveen R.C., advocate,
Defendant No.1 to 4, 7 to 11: Ex-parte)

Date of Institution of the suit : 17/04/2018

Nature of the suit : Partition and Separate Possession

Date of commencement of
recording of evidence. : 15/11/2021

Date on which the judgment : 31/08/2023
was pronounced.

Total Duration	Years	Months	Days
	05	04	14

XXXIV Addl. City Civil & Sessions Judge
Bengaluru.

JUDGMENT

This suit under VII Rule 1 read with Section 151 of the Code of Civil Procedure, 1908 is filed by the plaintiff for judgment and decree in favour of plaintiff and against defendants No.1 to 11 for partition of the suit schedule property by metes and bounds and put the plaintiff in separate possession of his 1/9th share of the suit schedule property; direct the defendants for payment of mesne profits since the death of their father; for permanent injunction directing the defendants not to either alienate or create charge over the suit schedule property; not to alter the characteristics of the building and to grant such other relief/s as deemed fit and expedient under the facts and circumstances of the case.

2. The brief facts of the case of the plaintiff is as under:

Plaintiff is the son of Sri. Late A. Veeraraghavalu Naidu. The plaintiff and defendants No.1 to 6 are the brothers and sisters. The defendants Nos.7, 8 and 9 are the children of deceased Smt. Navarathna Lakshmi @ Navarathna Kumari. The defendant Nos.10 and 11 are the children of the deceased Sri. Suresh Babu. Smt. Navarathna Lakshmi and Sri.Suresh Babu are the siblings of the plaintiff.

Sri. Late A.Veeraraghavalu Naidu, son of Sri. A.V. Chinnuswamy Naidu purchased property measuring 2400 Sq. ft. in Survey No.21/1 and 21/2 situated at Lottegollahalli, 2nd stage, Ward No.100, Bangalore North Taluk by way of Sale Deed dated 29.7.1968 from its previous owner Railway Men's House Building Co-operative Society Ltd. Sri. A.Veeraraghavalu Naidu executed a Will on 1.6.1978. As per the registered Will, all his children get equal share of the property after the demise of Sri. A.Veeraraghavalu Naidu. Sri. A.Veeraraghavalu Naidu died on 3.4.2008. As per the terms of the will the suit schedule property is required to be shared mutually between all the nine legal heirs entitling 1/9th share in suit schedule property. When plaintiff was away from town, the defendants had negotiated to sell the suit schedule property. The defendants No.1 to 4 and mother of defendants No.7, 8 and 9 and father of the defendants No.10 and 11 executed a Relinquishment Deed in favour of Sri. A.V. Muralidhar, defendant No.5. Now the defendant No.5 is trying to alienate the property excluding plaintiff and trying to create charge over the suit schedule property.

3. After the institution of the suit, the suit summons were issued and served to the defendants. Only defendants No.5 and 6 appeared through separate counsel and filed their separate written statement.

4. The brief contentions of written statement of Defendant No.5 is as under:

Defendants No.1 to 4 and 6 to 11 executed a Relinquishment Deed in favour of defendant No.5 to the extent of their share, which they succeeded by way of a registered Will dated 1.6.1979. Plaintiff agreed to give up his 1/9th share right in favour of defendant No.5. The defendant No.5 paid a sum of Rs.5,84,900/- to the plaintiff by Cheque No.281020,

281029, 287808 and also cash deposit on 29.6.2009 and 4.3.2010. The plaintiff on receipt of sum of Rs.5,84,900/- failed to release his right over the suit schedule property in favour of defendant No.5. Defendant No.5 requested the plaintiff to register his share in favour of defendant No.5 or to return the amount paid to him. The plaintiff promised defendant No.5 that he will release his share in favour of defendant No.5.

5. The brief contentions of written statement of Defendant No.6 is as under:

The defendant No.5 is trying to alienate the property excluding defendant No.6 and plaintiff. Hence, defendant No.6 prays to decree that the plaintiff and defendants are entitled for 1/9th share each in the suit schedule property.

6. On the basis of the pleadings of the parties, the following issues are framed:

(1) Whether Plaintiff proves that defendant No.5 has tried to alienate and create charge over the suit schedule property?

(2) Whether defendant No.5 proves that defendant No.6 has executed a Relinquishment Deed in favour of him to the extent of his share in suit schedule property?

(3) Whether defendant No.5 proves that Plaintiff has agreed to give up his 1/9th share in suit schedule property to him and has received Rs.5,84,900/- (Rs. Five Lakh Eighty Four Thousand Nine Hundred only) as contended in Para No.6 of his Written Statement?

(4) Whether Plaintiff is entitled for partition and possession of his 1/9th share in the suit schedule property as prayed in prayer (1) of the Plaint?

(5) Whether Plaintiff is entitled for mesne profits?

(6) Whether Plaintiff is entitled for permanent injunction as prayed in prayer (3) and (4) of the Plaint?

(7) What Order or Decree?

7. In order to prove the case, Plaintiff examined himself as PW.1 and marked 10 documents as Exs.P1 to P10. In order to disprove the case of the plaintiff and to prove their case, the defendant No.5 examined himself as DW.1 and defendant No.6 examined himself as DW-2.

8. Heard the arguments of the learned counsel for the plaintiff and counsel for the defendant No.5.

9. My findings to the above issues are as follows:-

- | | |
|--------------|---------------------------------------|
| Issue No.1:- | In the Negative. |
| Issue No.2:- | In the Negative. |
| Issue No.3:- | In the Negative. |
| Issue No.4:- | In the Affirmative. |
| Issue No.5:- | In the Negative. |
| Issue No.6:- | In the Negative. |
| Issue No.7:- | As per final order for the following: |

REASONS

10. Issue No.1 to 3 and 5:- As these issues are interrelated and overlapping, to avoid repetition I have taken these issues together for discussion.

11. Plaintiff, defendant No.5 and defendant No.6 have admitted that in terms of registered Will dated 01.06.1978 all the nine children of late Veera Raghavalu Naidu are having equal share i.e., 1/9th share each in the suit schedule property.

Defendant No.6 has filed his written statement on 25.02.2019, wherein he has supported the plaint averments and sought for declaration of 1/9th share each of plaintiff and defendants in suit schedule property.

Defendant No.5 has filed his written statement on 17.1.2020, wherein he has not stated anything as to claiming of 1/9th share by defendant No.6 in suit schedule property.

Defendant No.5 in his written statement at para Nos.6, 7 and 8 has taken the contention that plaintiff agreed to give up his 1/9th share right in favour of defendant No.5. The defendant No.5 paid a sum of Rs.5,84,900/- to the plaintiff by Cheque No.281020, 281029, 287808 and also cash deposit on 29.6.2009 and 4.3.2010. The plaintiff on receipt of sum of Rs.5,84,900/- failed to release his right over the suit schedule property in favour of defendant No.5. Defendant No.5 requested the plaintiff to register his share in favour of defendant No.5 or to return the amount paid to him. The plaintiff promised defendant No.5 that he will release his share in favour of defendant No.5.

12. Plaintiff, who has been examined as P.W.1 in his examination-in-chief evidence Affidavit filed as per Order XVIII Rule 4 of CPC, has reiterated the plaint averments.

PW-1 in his cross-examination has admitted as under:

“ನಾನು ಪ್ರತಿವಾದಿ-5 ರವರಿಂದ ರೂ.5,84,900/- ಪಡೆದು ಅದನ್ನು ನನ್ನ ಬ್ಯಾಂಕ್ ಖಾತೆಗೆ ಹಾಕಿದ್ದೇನೆ ಎನ್ನುವುದು ಸರಿ ಇದೆ. ಪ್ರತಿವಾದಿ-5 ಚೆಕ್ ಸಂಖ್ಯೆ: 281020, 281029 ಮತ್ತು 287808 ಮೂಲಕ ಮತ್ತು ದಿನಾಂಕ 29.6.2009 ಮತ್ತು 4.3.2010 ರಲ್ಲಿ ನಗದಾಗಿ ಒಟ್ಟು ರೂ.5,84,900/- ನನಗೆ ಕೊಟ್ಟಿದ್ದರು ಎನ್ನುವುದು ಸರಿ ಇದೆ.”

13. Defendant No.5, who has been examined as D.W.1 in his examination-in-chief evidence affidavit has reiterated his written statement contentions.

DW-1 in his cross-examination has answered as under:

“ಪ್ರತಿವಾದಿ 6 ರವರಿಂದ ನಾನು ಯಾವುದೇ ಹಕ್ಕು ಬಿಡುಗಡೆ ಪತ್ರ ಬರೆಸಿಕೊಂಡಿಲ್ಲ.”

“1993-94 ರಲ್ಲಿ ವಾದಿ ಚೆನ್ನೈಯಲ್ಲಿ 7½ ಎಕರೆ ಜಮೀನು ಕೊಂಡಿದ್ದರು ಎನ್ನುವುದು ಸರಿಯಿದೆ.”

“2005 ರಲ್ಲಿ ವಾದಿ ಚೆನ್ನೈನ ತನ್ನ ಜಮೀನು ಮಾರಾಟ ಮಾಡಿದಾಗ ನಾನು ರೂ 6 ಲಕ್ಷದ 10 ಸಾವಿರ ಸಾಲ ವಾಗಿ ಪಡೆದಿದ್ದೆ ಎನ್ನುವುದು ಸರಿಯಿಲ್ಲ. ಮೇಲೆ ಹೇಳಿದಂತೆ ಸಾಲ ಪಡೆದಿದ್ದರು, ಪಡೆದಿಲ್ಲ ಎಂದು ಸುಳ್ಳು ಹೇಳುತ್ತಿದ್ದೇನೆ ಎನ್ನುವುದು ಸರಿಯಿಲ್ಲ. ರೂ 6 ಲಕ್ಷದ 10 ಸಾವಿರದಲ್ಲಿ ರೂ 5 ಲಕ್ಷದ 84 ಸಾವಿರದ 900 ವಾಪಸ್ ಮಾಡಿದ್ದು, ಇನ್ನೂ ರೂ. 30,000 ಬಾಕಿ ಕೊಡುವುದು ಇದೆ ಎನ್ನುವುದು ಸರಿಯಿಲ್ಲ.”

“2008 ರಿಂದ 2018 ರ ವರೆಗೆ ವಾದಿಗೆ ನಾನು ಲಿಖಿತವಾಗಿ ಅಥವಾ ಬೇರೆ ಯಾವುದೇ ರೀತಿ ಅಂದರೆ ವಾಟಿಅಪ್ ಇತ್ಯಾದಿ ಮೂಲಕ ಕೇಳಿರುವುದಿಲ್ಲ, ಮೌಖಿಕವಾಗಿ ಮಾತ್ರ ಕೇಳಿರುತ್ತೇನೆ.”

14. Plaintiff, defendants No.5 and 6 have agreed that their father died on 3.4.2008. As per para No.6 of the written statement of defendant No.5, he has paid cash to plaintiff lastly on 04.03.2010. Plaintiff filed this suit on 07.04.2018 i.e., after lapse of more than 8 years after the last payment of cash by him to plaintiff on 4.3.2010. Defendant No.5 has not examined any witness to prove Rs.5,84,900/- paid by him to plaintiff was towards relinquishment of right of plaintiff in suit schedule property in favour of him and he has demanded plaintiff to execute relinquishment deed.

15. Defendant No.6, who has been examined as D.W.2 in his examination-in-chief evidence affidavit has reiterated his written statement contentions.

Plaintiff in Plaint prayer No.2 has sought for mesne profits from defendants since the date of death of their father.

Counsel for plaintiff has not suggested / questioned anything to Defendant No.5 / DW-2 as to mesne profits as to the rent received by defendant No.5 from suit schedule building since the date of death of their father;

It is pertinent to mention that there is no averment in the plaint as to mesne profits i.e., rent received by defendant No.5, since the date of death of father of plaintiff and defendants. The plaintiff in his examination-in-chief evidence also has not stated anything as to mesne

profits. But the counsel for plaintiff in the cross-examination of DW-2 has suggested as under:

“ದಾವಾ ಸ್ವತ್ತು ನೆಲ ಮಹಡಿ ಮತ್ತು 1 ನೇ ಮಹಡಿಯಲ್ಲಿ ತಲಾ 2 ವಾಸದ ಮನೆಗಳು ಇರುವ ಕಟ್ಟಡ ಇರುತ್ತದೆ. ಈ ಮನೆಗಳಿಂದ ಪ್ರತಿ ತಿಂಗಳು ಆದಾಯ ಇದೆ ಎನ್ನುವುದು ಸರಿ ಇದೆ. ಈ ಮನೆಗಳ ಪೂರ್ಣ ಆದಾಯ 2008 ರಿಂದಲೂ ಪ್ರತಿವಾದಿ-5 ಪಡೆಯುತ್ತಾ ಇದ್ದಾರೆ ಎನ್ನುವುದು ಸರಿಯಿದೆ.”

But the Counsel for plaintiff neither questioned nor suggested DW-5 / DW-1, who has said to be received rent and is liable to pay mesne profits as to the rent received by defendant No.5. Hence, whatever the admission / answer given by defendant No.6/DW-2 no way helps the plaintiff to prove he is entitled for mesne profits. The plaintiff is also seeking permanent injunction and not to alter the characteristics of the building by permanent injunction at prayer Nos.3 and 4. PW-1 in his cross-examination has answered that he has no documents to show defendant No.5 tried to sell suit schedule building. The plaintiff also has not examined any witness to prove he is entitled for the prayers as sought for in prayer Nos.2 and 3. The counsel for plaintiff also has not questioned or suggested to defendant No.5/DW-1 and elicit favourable answer or admission to prove he is entitled for the prayers as sought for in prayer Nos.2 and 3.

16. Defendants No.1 to 4 and defendants No.7 to 11 have remained exparte in spite of service of summons to them. Counsel for plaintiff has produced Ex.P4 to P9 registered relinquishment deeds dated 29.4.2009 by which defendants No.1 to 4, mother of defendants No.7 to 9 and father of defendants No.10 and 11 have relinquished their right in the

suit schedule property in favour of defendant No.5 by receiving a token amount of Rs.1,25,000/-.

17. In view of the above discussion, this Court is of the opinion that plaintiff failed to prove issue No.1 and 5 and defendant No.5 also failed to prove issue Nos.2 and 3. Hence, I answer Issues No.1 to 3 and 5 in the Negative.

18. Issue Nos.4 and 6: In view of the finding I arrived on Issue Nos.1 to 3 and 5, this court is of the opinion that plaintiff is entitled for 1/9th share in suit schedule property as prayed in prayer No.1 of the plaint and he is not entitled for permanent injunction as prayed in prayer Nos.3 and 4 of the plaint. Hence, I answer issue No.4 in Affirmative and Issue No.6 in Negative.

19. Issue No.7: In view of the finding I arrived on Issues Nos.1 to 6, I proceed to pass the following :

O R D E R

The suit under VII Rule 1 read with Section 151 of the Code of Civil Procedure, 1908 filed by the plaintiff is partly decreed with costs.

The plaintiff is entitled to 1/9th, defendant No.5 is entitled to 7/9th and defendant No.6 is entitled to 1/9th share in suit schedule property.

Draw Preliminary decree accordingly.

(Dictated to the Judgment Writer partly and partly directly on computer, transcribed and typed by him, corrected, signed and pronounced in the open court on this the 31st day of August, 2023).

(G. Raghavendra)
XXXIV Addl. City Civil & Sessions Judge
Bengaluru.

ANNEXURE

List of witnesses examined on behalf of Plaintiff:

PW-1: Ganapathi A.V.

List of exhibits marked on behalf of Plaintiff:

- Ex.P1 : Genealogy affidavit.
Ex.P2 : True copy of registered sale deed dated 29.7.1968.
Ex.P3 : True copy of registered will dated 1.6.1978.
Ex.P4 to 9 : True copy of 6 registered relinquishment deeds dated 29.1.2009.
Ex.P10 : True cop of Encumbrance certificate.

List of witness examined on behalf of Defendant No.5:

DW.1: A.V. Muralidhar.

List of exhibits marked on behalf of Defendant No.5:

N I L

List of witness examined on behalf of Defendant No.6:

DW.2: Ramesh Babu

List of exhibits marked on behalf of Defendant No.6:

N I L

XXXIV Addl. City Civil & Sessions Judge
Bengaluru.