

**IN THE COURT OF THE PRL. CIVIL JUDGE
& JMFC., GUBBI**

**Present: RADHA.S, B.A., LL.M.,
Prl. Civil Judge & JMFC.,
Gubbi**

Dated this the 16th day of March 2019

O.S.No.210/2013

Plaintiff : V. Anuradha D/o Late
Venkateshaiah W/o
Vivekanand, 33 years,
R/o 61/2,
Yathiraju Naidu Road,
D.J. Hally Main Road,
Bangalore City.

(By Sri. K.R.K., Advocate)

V/s

Defendants : 1. Nandeesh S/o Late
Venkateshaiah,
30 years,
2. Savitha D/o Late
Venkateshaiah,
28 years,
3. Bhulakshamma W/o
Late Venkateshaiah,
36 years,
4. Varadaraju S/o Late
Venkateshaiah,
16 years,
5. Anusuya D/o Late
Venkateshaiah,
14 years,

6. Tharuna S/o Late Venkateshaiah, 10 years, Defendants No. 4 to 6 are minors, represented by their mother natural guardian Bhulkshamma.
7. Shivamma W/o I.C. Shivanna, 75 years,
8. Mahalingappa S/o Siddananjappa, 50 years,
9. Lakshamma W/o Ugrappa, 60 years,
10. Ramachandrappa S/o Chikkavenkataramanappa, 60 years,
11. Muniyappa S/o Venkata Rao, 55 years, All are R/o Nandihally Village, Chelur Hobli, Gubbi Taluk.

(D2 YSR., D3 to 6 NMC., D7 & 11 CRB., D8 TBS., D9 VRV., D10 DM., Advocate and D1 Ex-parte)

Date of filing of suit	:	27.07.2013
Nature of suit	:	Partition and separate possession
Judgment pronounced on	:	16.03.2019

Total duration

: Years Months Days
 05 07 19

(Smt. Radha.S)
Prl. Civil Judge & JMFC.,
Gubbi.

JUDGMENT

This is a suit filed by plaintiff against defendants for the relief of partition and separate possession and permanent injunction in respect of suit schedule properties.

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

One Late Thimmaiah has got a son by name Venkateshaiah. The said Venkateshaiah has got two wives namely Neelambika the Senior wife and Bhulakshamma the Junior wife. The said Neelambika has got three children namely Anuradha (plaintiff), Nandeesh (1st defendant) and Savitha (2nd defendant) and the said Neelambika is no more. Bhulakshamma (3rd defendant) has got three minor children namely Varadaraju (4th defendant), Anusuya (5th defendant) and Tharuna (6th defendant).

It is submitted that the suit schedule properties were originally belonged to one late Thimmaiah, i.e the grandfather of the plaintiff and the defendant No. 1 and 2 and 4 to 6 and the same was ancestral and joint family properties and he was in possession and enjoyment of the same. The said Thimmaiah died leaving behind him, his only son namely Venkateshaiah as his legal representative and the said Venkateshaiah has succeeded to the suit schedule properties through succession and khatha and pahanies in respect of suit schedule properties are made out in the name of the said Venkateshaiah and since then he became the owner in possession and enjoyment of the same.

The mother of the plaintiff viz Neelambika died prior to the death of the said

Venkateshaiah. Taking advantage of this fact the said Venkateshaiah has married with one Bhulakshamma and out of their wedlock the defendant No. 4 to 6 are born. It is submitted that after the lapse of some years the said Venkateshaiah and defendants No. 1 to 6 are colluded with each other have built up hatredness towards the plaintiff. Further it is submitted that, the said Venkateshaiah has addicted to bad habits like drinking of Alcohol and playing card and mismanaging the income of the suit schedule properties for his immoral purposes. During the life time of the said Venkateshaiah without having any independent right, title, interest, muchless possession over the suit schedule properties, by colluding with defendant No. 1 to 6 has sold the land bearing survey number 86/1A measuring 01 acres 15 guntas to one

Shivamma W/o I.C. Shivanna i.e. the 7th defendant in the present case, the land bearing survey number 86/1B measuring 0-12 guntas to one Mahalingappa S/o Siddananjappa i.e the 8th defendant in the present case, to the extent of 0-15 guntas to one Ugrappa S/o Late Narasimhaiah the husband of 9th defendant and to the extent of 0-12 guntas to one Ramachandrappa S/o Chikkavenkataramanappa i.e the 10th defendant in land bearing survey number 86/3A and the land bearing survey number 86/1A2 to one Muniyappa S/o Venkata Rao the 11th defendant for meager amount without any legal necessity and without the consent of the plaintiff under the different sale deeds. As such the defendant No. 7 to 11 are made as necessary parties in this suit.

It is submitted that after the death of said Venkateshaiah, the 3rd defendant with collusion with the revenue officials and giving false declaration before them and succeeded in getting the khatha and pahanies into her on the bases of Powthi Varas and now the 3rd defendant is seriously attempting to alienate the suit schedule properties to others. It is further submitted the 3rd defendant has began to obstruct the plaintiff to cultivate the suit schedule properties in joint, for which the plaintiff has conveyed several Panchayathi in the village before the elders and requested the defendants No. 1 to 6 to allot her legitimate share in the suit schedule properties but the defendants No. 1 to 6 have refused to allot the legitimate share to the plaintiff. As such the plaintiff has filed the present suit against the defendants for partition and separate

possession in respect of suit schedule properties and prayed to decree the suit.

3. After registering the suit, suit summons was issued to the defendants. In pursuance of summons issued to the defendants, except the 1st defendant other defendants have put their appearance before the court through their counsels. Despite of service of summons on the 1st defendant, he has failed to appear before the court as such, the 1st defendant has placed as Ex.Parte. Out of other defendants, the defendant No. 3 to 6, 7, 8, 10 and 11 have filed their separate written statement.

In the written statement, the defendant No. 3 to 6 have clearly admitted that, the suit schedule properties are the ancestral and joint family properties of the plaintiff and defendant

No. 1 to 6 and the defendant No. 3 to 6 have admitted the para Nos. 2 and 3 of the plaint and partly denied the para No. 4 and rest of the plaint averments have been denied by the defendant No. 3 to 6. Further the defendant No. 3 to 6 have prayed to allot the legitimate share to the plaintiff in some portion of the suit schedule properties.

In the written statement, the defendant No. 7 has denied the entire plaint averments. It is the defense of the 7th defendant that, the deceased Venkateshaiah, father of the plaintiff was the absolute owner of the suit schedule properties. The item No.1 of the suit schedule properties, measures 2 acres 05 guntas out of which 0-30 guntas of land was acquired for Hemavathi channel. The remaining 1 acre 15 guntas of land was in

possession and enjoyment of the said Venkateshaiah. In order to maintain his family and for the improvement of his lands the said Venkateshaiah had raised loan from State Bank of Mysore, Chelur. The said Venkateshaiah had not repaid the loan within the time, as such the said Bank was demanding Venkateshaiah to clear loans or to face legal consequences of auctioning of the suit schedule properties to recover the said loan. As such the said Venkateshaiah had decided to sell the item No. 1 of the suit schedule properties and he approached the 7th defendant to purchase the same in order to clear the said loan raised from S.B.M. Chelur. Then the 7th defendant had agreed to purchase the same for valuable consideration. The said Venkateshaiah had executed a Regd. Sale deed for 1 acre 15 guntas of land in the item

No. 1 of the suit schedule properties on 22-03-2006 in favour of the 7th defendant and he delivered the possession of the said property to the 7th defendant. From the date of purchase, the 7th defendant is in possession and enjoyment of the above said property purchased by her. The Revenue documents for the said property are mutated in to the name of the 7th defendant. The above siad alienation made by deceased Venkateshaiah was for his legal necessity. The 7th defendant had paid consideration amount of Rs. 46,000 with respect to the above said sale to Venkateshaiah to repay the above said loan and also as the said Venkateshaiah requested the 7th defendant to pay hand loan of Rs. 2,17,000-00 to clear the entire loan raised by him. The 7th defendant paid Rs. 2,17,000-00 drawn from her S.B. Account to Venkateshaiah

and after receiving the same from the 7th defendant the said Venkateshaiah had cleared the loan of Rs. 2,63,000-00 of State Bank of Mysore, Chelur Branch. During his life time the said Venkateshaiah had failed to repay the above said hand loan received from the 7th defendant. Now the plaintiff and the defendant Nos. 1 to 6 are bound to repay the said amount as the same was paid to clear the loan raised by Venkateshaiah from the Bank.

In the written statement, the defendant No. 8 has clearly admitted that, the suit schedule properties are the ancestral and joint family properties of the plaintiff and defendant No. 1 to 6 and the defendant No. 8 has admitted the para Nos. 2 of the plaint and partly denied the para No. 3 and 4 and rest of the plaint averments have been denied by the

defendant No. 8. It is the defense of the defendant No. 8 that, during the life time of Venkateshaiah, he himself and 1st defendant Nandeesh and on behalf of his minor children namely 2nd defendant-Savitha, 4th defendant-Varadaraju, 5th defendant Anusuya and Thriveni have joined together and sold to the extent of 0-12 guntas in land bearing survey number 86/1B i.e., suit schedule item No. 2, for legal benefit of his minor children and development of other properties for a valid consideration under the Registered sale deed dated 01-04-2009 and on the bases of the registered sale deed the mutation has been accepted in the name of 8th defendant, and from the date of purchase the 8th defendant is became the absolute owner in peaceful possession and enjoyment of the said property.

Further it is submitted that the plaintiff is well aware about all these facts, even though the plaintiff filed this false suit against the 8th defendant.

In the written statement, the defendant No. 10 has clearly admitted that, the suit schedule properties are the ancestral and joint family properties of the plaintiff and defendant No. 1 to 6 and the defendant No. 10 has admitted the para Nos. 2 of the plaint and partly denied the para No. 3 and 4 and rest of the plaint averments have been denied by the defendant No. 10. It is the defense of the defendant No.10 that, during the life time of Venkateshaiah, he himself and 1st defendant Nandeesh and on behalf of his minor children namely 2nd defendant – Savitha, 4th defendant – Varadaraju, 5th defendant Anusuya and

Thriveni have joined together and sold to the extent of 0-12 guntas in land bearing survey number 86/3A i.e., some portion of the suit schedule item N. 3, for legal benefit of his minor children and development of other properties under the registered sale deed dated 03-01-2005, and on the bases of said sale deed mutation has been accepted in the name of 10th defendant. From the date of purchase 10th defendant is became the absolute owner in peaceful possession and enjoyment of the said property.

It is further submitted that the 10th defendant belongs Ediga Community and 10th defendant and some people are joined together and open a Sangha by name “Arya Edigara Sanga” C. Nandihally, Gubbi Taluk, Tumkur District, the 10th defendant is the president of

said sangha, under that sangha they have constructed a temple in the name and style as Shree Adishakthi Renuka Yallamma in the said property on 01-02-1996 and all the C. Nandihally villagers and other villagers of devotees are performing the pooja in the said temple.

It is further submitted that the 10th defendant is purchased the said property for the purpose of construction of the said Shree Adishakthi Renuka Yallamma Temple and not for any other purposes and every day all the devotees are performing pooja and seva in the said Temple. The said 10th defendant and other devotees are proposed to construction a Samudaya Bhavan and they were performing the functions like marriage, Namakarana etc., in the said property. As such the plaintiff is

not entitled to get any share in the item No. 3 of the suit schedule properties.

In the written statement, the defendant No. 11 has denied the entire plaint averments. It is the defense of the 11th defendant that, the deceased Venkateshaiah, father of the plaintiff was the absolute owner of the suit schedule properties. The item No. 4 of the suit schedule property totally measures 3 acres 06 guntas. The 11th defendant asked the deceased Venkateshaiah to sell 0.2.08 guntas of land in Sy.No. 86/3C1 i.e., the item No. 3 of the suit schedule properties to him for a passage to reach his garden land through the said property. The said Venkateshaiah had agreed to sell the 0.2.08 guntas of land in item No. 4 of the suit schedule property, in pursuance of which, the 11th defendant

executed a Regd. Sale deed on 17-09-1998 and put him in possession and enjoyment of said land purchased by him. From the date of purchase the 11th defendant is making use of said 0-2.08 guntas of land for passage to carry men and materials to his land through the same. The khata and pahani in respect of said 0-2.08 guntas of land is also mutated into the name of the 11th defendant. On these grounds all the defendants prayed to dismiss the suit.

4. On the basis of above pleadings of both parties, the following issues have been framed by this court;

1. Whether plaintiff proves that suit schedule properties are the ancestral and joint family properties of plaintiff and defendants?
2. Whether the plaintiff proves the alleged interference by the defendant No. 1 to 6?

3. Whether the plaintiff is entitled for the relief as prayed in the suit?

4. What order or decree?

5. To substantiate her case the plaintiff herself has examined as P.W.1 and 20 documents have been got marked as Ex-P-1 to 20 and closed her side evidence. On the other hand the 10th defendant has examined as DW1 and 10 documents have been got marked as Ex-D-1 to 10, defendant No. 8 defendant has examined as DW2 and 04 documents have been got marked as Ex-D-11 to 14, 7th defendant has examined as DW3 and 04 documents have been got marked as Ex-D-15 to 18, and the SPA holder of 11th defendant by name Sri. N.M. Baburao has examined as DW4 and 06 documents have been got marked as Ex-D-19 to 24, and closed their side evidence. Thereafter case was posted for arguments.

6. Heard the arguments of learned counsels for the both parties and perused records available on file.

7. My answer to above issues are as under;

Issue No.1 : In the partly Affirmative.

Issue No.2 : In the Negative.

Issue No.3 : In the partly Affirmative.

Issue No.4 : As per final order for the following

::REASONS::

8. Issue No.1 : The plaintiff has filed the present suit for partition and separate possession of her legitimate share in the suit schedule properties by metes and bounds and permanent injunction. Inter-alia the defendant No. 7 to 11 have denied the case of the plaintiff. There is no dispute regarding the relationship between the plaintiff and defendant No. 1 to 6 and also the defendants

have admitted that, the suit schedule properties are the ancestral and joint family properties of plaintiff and defendant No. 1 to 6. Under such circumstances, the very burden lies on the plaintiff to prove her case on preponderance of probabilities.

9. The plaintiff has adduced her substantive evidence before the court by way of filling her examination-in-chief in the form of an affidavit and examined as PW1 and has reiterated the entire averments of the plaint. In support of her case she produced in all 20 documents. Ex.P.1 is the RTC for the year 99-2000 to 2001-02 pertaining to suit schedule item No. 1, while perusing this document in Sy.No. 86/1A, measuring 02 acres 05 guntas of land is standing in the name of plaintiff's father viz Venkateshaiah S/o Thimmaiah. Ex.P.2 is the

RTC for the year 99-2000 to 2001-02 pertaining to suit schedule item No. 2, while perusing this document in Sy.No. 86/1B, measuring 12 guntas of land is standing in the name of one Huchamma D/o Chikkerappa. Ex.P.3 is the RTC for the year 99-2000 to 2001-02 pertaining to suit schedule item No. 3, while perusing this document in Sy.No. 86/3A, measuring 01 acres 01 guntas of land is standing in the name of plaintiff's father viz Venkateshaiah S/o Thimmaiah and 15 guntas of land is standing in the name of 9th defendant. Ex.P.4 is the RTC for the year 99-2000 to 2001-02 pertaining to suit schedule item No. 4, while perusing this document in Sy.No. 86/3C1, measuring 22 guntas of land is standing in the name of 11th defendant and remaining land in the said item No. 4 is standing in the name of plaintiff's father viz

Venkateshaiah S/o Thimmaiah. Ex.P.5 is the RTC for the year 99-2000 to 2001-02 pertaining to suit schedule item No. 5, while perusing this document in Sy.No. 86/3B, measuring 33 guntas of land is standing in the name of one Huchamma D/o Chikkarangappa. Ex.P.6 is the RTC for the year 2012-2013 pertaining to suit schedule item No. 6, while perusing this document in Sy.No. 86/1A2, measuring 01 acre 10 guntas of land is standing in the name of 7th defendant. Ex.P.7 is the RTC for the year 2012-2013 pertaining to suit schedule item No. 7, while perusing this document in Sy.No. 86/1A1, measuring 35 guntas of land is standing in the name of plaintiff's father i.e., Venkateshaiah S/o Thimmaiah. Ex.P.8 is the RTC for the year 2012-2013 pertaining to suit schedule item No. 4, while perusing this document in Sy.No.

86/3C1, measuring 0.02.08 guntas of land is standing in the name of 11th defendant and remaining land in the said item No. 4 is standing in the name of plaintiff's father viz Venkateshaiah S/o Thimmaiah. Ex.P.9 is the RTC for the year 2012-2013 pertaining to suit schedule item No. 3, while perusing this document in Sy.No. 86/3A, measuring 29 guntas of land is standing in the name of plaintiff's father viz Venkateshaiah S/o Thimmaiah, 15 guntas of land is standing in the name of 9th defendant's husband viz Ugraiah and 12 guntas of land is standing in name of 10th defendant. Ex.P.10 is the RTC for the year 2012-2013 pertaining to suit schedule item No. 5, while perusing this document in Sy.No. 86/3B, measuring 33 guntas of land is standing in the name of one Huchamma D/o Chikkarangappa. Ex.P.11 is

the RTC for the year 2012-2013 pertaining to suit schedule item No. 2, while perusing this document in Sy.No. 86/1B, measuring 12 guntas of land is standing in the name of one 8th defendant. Ex.P.12 and 13 are the mutation register extract made in the name of defendant No. 7 and defendant No. 8 from plaintiff's father viz Venkateshaiah S/o Thimmaiah. Ex.P.14 is the mutation register extract M.R. No. 31/97-98, while perusing this document 02 acre 05 guntas of land in Sy.No. 86/1A, 01 acre 16 guntas of land in Sy.No. 86/3A and 03 acres 06 guntas of land in Sy.No. 86/3C1 have been transferred in the name of plaintiff's father viz Venkateshaiah S/o Thimmaiah on the basis of Powthi Varasu. Ex.P.15 is the RTC for the year 2015-2016 pertaining to suit schedule item No. 6, while perusing this document in Sy.No.

86/1A2, measuring 01 acre 10 guntas of land is standing in the name of 7th defendant. Ex.P.16 is the RTC for the year 2015-2016 pertaining to suit schedule item No. 3, while perusing this document in Sy.No. 86/3A, measuring 29 guntas of land is standing in the name of plaintiff's father viz Venkateshaiah S/o Thimmaiah, 15 guntas of land is standing in the name of 9th defendant's husband viz Ugraiah and 12 guntas of land is standing in name of 10th defendant. Ex.P.17 is the RTC for the year 2015-2016 pertaining to suit schedule item No. 2, while perusing this document in Sy.No. 86/1B, measuring 12 guntas of land is standing in the name of one 8th defendant. Ex.P.18 is the RTC for the year 2015-2016 pertaining to suit schedule item No. 4, while perusing this document in Sy.No. 86/3C1, measuring 0.02.08 guntas of land is

standing in the name of 11th defendant and remaining land in the said item No. 4 is standing in the name of plaintiff's father viz Venkateshaiah S/o Thimmaiah. Ex.P.19 is the certified copy of sale deed dated 22-03-2006 executed by plaintiff's father viz Venkateshaiah S/o Thimmaiah, in favour of 7th defendant, while perusing this document plaintiff's father viz Venkateshaiah has sold 01 acre 15 guntas of land in Sy.No. 86/1A. Ex.P.20 is the certified copy of sale deed dated 01-04-2009 executed by plaintiff's father viz Venkateshaiah S/o Thimmaiah and 1st defendant in favour of 8th defendant, while perusing this document plaintiff's father viz Venkateshaiah and 1st defendant has sold 12 guntas of land in Sy.No. 86/1B.

10. I have meticulously gone through the entire documents produced by the plaintiff. As per the plaintiff's pleadings the suit schedule properties are her ancestral properties and her grandfather died intestate as such her father viz Venkateshaiah and defendant No. 1 to 6 alone have no rights to sell the some of the suit schedule properties to defendant No. 7 to 11. From the documents produced by the plaintiff it is clear that, the suit schedule properties are all standing in the name of plaintiff's father and the same are ancestral and joint family properties except suit schedule item No. 5. There is no dispute about the relationship is concerned. To test the oral testimony of the PW1, the defendants counsel has cross examined the PW1 but nothing has been elicited from the cross examination of PW1.

11. Per Contra, to disprove the case of the plaintiff, the 10th defendant adduced his evidence before the court by way of filing his examination-in-chief in the form of an affidavit, wherein he has reiterated the entire averments of the written statement. The 10th defendant has placed before the court in all 10 documents which are marked as Ex-D-1 to 10. On meticulous scrutiny of these documents Ex-D-1 is the original copy of registered sale deed dated 03-01-2005 executed by plaintiff's father viz Venkateshaiah S/o Thimmaiah and 1st defendant in favour of 10th defendant, while perusing this document the plaintiff's father has sold measuring 12 guntas of land in in Sy.No. 86/3A, i.e., suit schedule item No. 3 in the present case. Ex-D-2 is the certificate of registration of society. Ex-D-3 to 8 are the

RTCs. Ex.D.9 is the mutation register extract. Ex.D10 is the tax paid receipt.

12. The 8th defendant adduced his evidence before the court by way of filling his examination-in-chief in the form of an affidavit, wherein he has reiterated the entire averments of the written statement. The 8th defendant has placed before the court in all 04 documents which are marked as Ex-D-11 to 14. On meticulous scrutiny of these documents Ex-D-11 is the certified copy of registered sale deed dated 01-04-2009 executed by plaintiff's father viz Venkateshaiah S/o Thimmaiah and 1st defendant in favour of 8th defendant, while perusing this document the plaintiff's father has sold measuring 12 guntas of land in Sy.No. 86/1B, i.e., suit schedule item No. 2 in the present case. Ex-D-

12 is the RTC. Ex.D.13 is the mutation register extract. Ex.D14 is the tax paid receipt.

13. The SPA holder of 7th defendant viz S. Gurubasavaiah S/o I.C. Shivanna has adduced his evidence before the court by way of filling his examination-in-chief in the form of an affidavit, wherein he has reiterated the entire averments of the written statement and examined as DW3. The Dw3 has placed before the court in all 04 documents which are marked as Ex-D-15 to 18. On meticulous scrutiny of these documents Ex-D-15 is the original copy of registered sale deed dated 22-03-2006 executed by plaintiff's father viz Venkateshaiah S/o Thimmaiah and 1st defendant in favour of 7th defendant, while perusing this document the plaintiff's father has sold measuring 01 acre 15 guntas of land

in Sy.No. 86/1A, i.e., suit schedule item No. 1 in the present case. Ex-D-16 is the endorsement issued by S.B.M. Bank, Chelur branch. Ex.D.17 is the tax paid receipt. Ex.D. 18 is the account extract.

14. The SPA holder of 11th defendant viz N.M. Baburao S/o Muniyappa Rao has adduced his evidence before the court by way of filling his examination-in-chief in the form of an affidavit, wherein he has reiterated the entire averments of the written statement and examined as DW4. The DW4 has placed before the court in all 06 documents which are marked as Ex-D-19 to 24. On meticulous scrutiny of these documents Ex.D.19 is the Special Power of Attorney executed by 11th defendant in favour of DW4. Ex-D-20 is the original copy of registered sale deed dated

17-09-1998 executed by plaintiff's father viz Venkateshaiah S/o Thimmaiah in favour of 11th defendant, while perusing this document the plaintiff's father has sold measuring 00 acres 02.05 guntas of land in Sy.No. 86/3C1, i.e., suit schedule item No. 4 in the present case. Ex-D-21 and 22 are the RTCs. Ex.D23 and 24 are the tax paid receipts.

15. It is not the defence of the defendants that there was a family partition between the plaintiff, her father Venkateshaiah and defendant No. 1 to 6. Under such circumstances as per the plaint averments no partition has taken place in the suit schedule properties. During the cross examination, the DW1 has clearly admitted that, the plaintiff and defendant No. 1 to 6 are residing jointly and he does not know about the partition

effected between the plaintiff and defendant No. 1 to 6. Further the DW1 in his cross examination has clearly admitted that, he has not taken the signature from the plaintiff to the sale deed. The portion of cross examination of DW1 dated 02-03-2017 is reproduced as under:-

ವಾದಿ ಮತ್ತು ಪ್ರತಿವಾದಿಗಳು ಈಗಲೂ ಸಹ ಒಟ್ಟು ಕುಟುಂಬದಲ್ಲಿ ವಾಸವಾಗಿರುತ್ತಾರೆ. ಭಾಗವಾಗಿರುವುದು ನನಗೆ ಗೊತ್ತಿಲ್ಲ, ನಾನು ಖರೀದಿಸಿರುವ ಕ್ರಯ ಪತ್ರಕ್ಕೆ ವಾದಿಯ ಸಹಿಯನ್ನು ಪಡೆದುಕೊಂಡಿರುವುದಿಲ್ಲ.

ದಿನಾಂಕ: 01-02-1996 ರಂದು ಸರ್ವೆ ನಂಬರ್ 86/3ಎ ರಲ್ಲಿ ಒಂದು ದೇವಸ್ಥಾನವನ್ನು ನಿರ್ಮಾಣ ಮಾಡಿ ಸಾರ್ವಜನಿಕರಿಗೆ ಲೋಕಾರ್ಪಣೆ ಮಾಡಿದ ಸಮಯದಲ್ಲಿ ಸದರಿ ಆಸ್ತಿಯ ಖಾತೆ ಪಹಣಿ ವಾದಿಯ ತಂದೆಯ ಹೆಸರಿಗೆ ಇತ್ತು ಎಂದರೆ ಸರಿ.

While perusing the entire chief and cross examination of DW1, the 10th defendant has purchased 12 guntas of land in suit schedule item No. 3 under register sale deed dated 03-01-2005 but he stated in his written

statement as well as in the chief examination as he has constructed Sri. Adishakthi Renuka Yallamma Temple in the said property in the year 1996. It is pertinent to note that, the 10th defendant has purchased 12 guntas of land in the year 2005 then the question of construction of Sri. Adishakthi Renuka Yallamma Temple in the said property in the year 1996 does not arise at all. As such the version of the 10th defendant is so far away to be believed.

16. To test the oral testimony of defendant No.8 i.e., DW2, the plaintiff's counsel has cross examined the DW2 at length, in his cross examination the DW2 has admitted that he does not know the contents of his chief examination and the partition effected between the plaintiff and defendant No. 1 to 6. The

portion of cross examination of DW2 dated 31-07-2017 is reproduced as under:

ನಾನು 6ನೇ ತರಗತಿಯವರೆಗೂ
ಓದಿರುತ್ತೇನೆ. ನಿಮ್ಮ ಪ್ರಮಾಣ ಪತ್ರದಲ್ಲಿ
ಬರೆದಿರುವ ವಿಚಾರಗಳು ಗೊತ್ತಿದೆಯೇ ಎಂದರೆ
ಗೊತ್ತಿಲ್ಲ.

ಅವರ ಮಕ್ಕಳ ಹೆಸರು 1ನೇ ನಂದ
ಅಲಿಯಾಸ್ ಅನುರಾಧ, 2ನೇ ಸವಿತ , 3ನೇ
ನಂದೀಶ ಎಂದಿದ್ದು, ಚಿಕ್ಕ ಹೆಂಡತಿಯವರ
ಮಕ್ಕಳು 1 ಮತ್ತು 2ನೇ ಯವರ ಹೆಸರು ನನಗೆ
ಗೊತ್ತಿಲ್ಲ. 3ನೇಯವರ ಹೆಸರು ವರದರಾಜು
ಎಂದಿರುತ್ತದೆ, ಇವರಾರು ಒಟ್ಟು
ಕುಟುಂಬದಲ್ಲಿದ್ದು ಇಂದಿಗೂ
ಭಾಗವಾಗಿಲ್ಲವೆಂದರೆ ಅವರೆಲ್ಲ ಬೇರೆ ಬೇರೆ
ವಾಸವಿದ್ದಾರೆ. ಅವರು ವಿಭಾಗ ಪತ್ರ
ಮಾಡಿಕೊಂಡಿದ್ದಾರೆ. ಆ ಪತ್ರವನ್ನು ನಾನು
ನೋಡಿಲ್ಲ. ಯಾವ ವರ್ಷ ವಿಭಾಗವಾಗಿರುತ್ತದೆ
ಎಂದು ನನಗೆ ಗೊತ್ತಿಲ್ಲ.

17. On going through the entire documents and evidence placed by the both parties in the present case, the plaintiff has successfully proved that, the suit schedule properties except suit item No. 5 are the ancestral properties of the plaintiff. Since the plaintiff and plaintiff's father viz Venkateshaiah are alive as on 09-09-2005 as such, the plaintiff

will get equal share in her ancestral properties. Therefore as per ratio laid down by the Hon'ble Apex Court in the following judgments:

2011(9) SCC 788 – in the case of Gonduri Koteshwaramma – V/s- Chakri Yandi – the Hon'ble Apex Court pleased to held that the partition would open only when the ancestor dies. The judgment of Gonduri Koteshwaramma (supra) has been upheld as the correct preposition of law in the recent judgment of the Hon'ble Apex Court reported in 2015(4) KCCR 3265 (SC) – in the case of in the case of Prakash and others –V/s- Pulvathi & others.

18. As per section 6 of Hindu Succession (Amendment) Act 2005, the daughters shall also to be treated as coparceners along with sons and the Act came into force on 09/09/2005 and as per the bar contained till December 2004 for effecting partition in the landed properties or properties already partitioned. Admittedly, the plaintiff and

plaintiff's father viz Venkateshaiah are alive as on 09-09-2005, as such the plaintiff is entitled to equal share along with her brothers and sisters i.e defendant No. 1, 2 and 4 to 6, which means plaintiff will get 1/6th share in the suit properties by metes and bounds except suit schedule item No. 5 and 00.2.5 (ಎರಡು ವರೆ ಗುಂಟೆ ಮಾತ್ರ) guntas of land in item No. 4 which has been sold in favour of 11th defendant in the year 1998 by the plaintiff's father as per Ex.D20. Therefore, I answer issue No.1 in the partly Affirmative.

19. Issue No.2 : It is the specific case of the plaintiff that, the suit schedule properties are the ancestral and joint family properties of plaintiff and defendant No. 1, 2 and 4 to 6 and they are in joint possession and enjoyment of the same. When that, being the case and when

the plaintiff herself admitted that, the defendant No. 1 to 6 are in joint possession and enjoyment of the suit schedule properties along with her, then the question of interference by the defendant No. 1 to 6 does not arise at all. More over it is well settled rule of law that, permanent injunction can not be granted against the co-owner. Under these circumstances the plaintiff has utterly failed to prove the interference by the defendant No. 1 to 6 as such, I answer issue No. 2 in the Negative.

20. Issue No.3 : It is pertinent to note that, as per Ex.P.5 and Ex.P.10 the suit schedule item No. 5 is standing in the name of one Huchchamma D/o Chikkarangappa, as per these documents the suit schedule item No.5 is not the ancestral and joint family properties

of plaintiff and defendant No. 1, 2 and 4 to 6. Moreover there is no explanation in the pleadings by the plaintiff regarding the relationship with the said Huchchamma and she has not made as a party in the present suit, as such the claim of the plaintiff in respect of suit item No. 5 is not acceptable. More over the plaintiff has not produced any documents to show that, the suit schedule item No. 5 is also her ancestral and joint family property. It is pertinent to note that, on 17-09-1998, the plaintiff's father viz Venkateshaiah has sold out 00 acres 2.5 guntas (ಎರಡು ವರೆ ಗುಂಟೆ ಮಾತ್ರ) of land in suit schedule item No. 4 to the 11th defendant as per Ex.D-20, as per ratio laid down by the Hon'ble Apex Court in the case **of Prakash and others -V/s- Pulvathi & others., reported in 2015(4) KCCR 3265 (SC)** – the

alienation is made out before 20-12-2004, as such the land sold out as per Ex.D-20 to the 11th defendant is not remained as an ancestral property of the plaintiff as on the date of institution of the present suit. Under these circumstances the plaintiff is not entitled to any share in the suit schedule item No.5 as well as 00.2.5 guntas (ಎರಡು ವರೆ ಗುಂಟೆ ಮಾತ್ರ) of land in suit item No. 4. The 7th defendant in her written statement has taken the contention that, in suit item No. 1, measuring 30 guntas of land has acquired for Hemavathi channel but in order to prove this contention she has not produced any documents to prove the same. The sale deeds executed by the father of the plaintiff viz Venkateshaih and 1st defendant and others in favour defendant No. 7 to 10 as per Ex.D1, 11 and 15 are not

binding on the plaintiff. Under these findings I answer issue No. 3 in the partly Affirmative.

21. Issue No.4 : In view of above discussion made and conclusion arrived at issue Nos. 1 to 3, the suit of plaintiff is liable to be partly decreed. Hence I proceed to pass the following;

O R D E R

Suit of the plaintiff is hereby partly decreed.

The relief of permanent injunction to restrain the defendant No. 1 to 6 from interfering into the peaceful possession and enjoyment of the plaintiff in respect of suit schedule properties is hereby declined.

The suit of the plaintiff in respect of suit item No. 4 to the extent of 00.2.5 guntas

(ಎರಡು ವರೆ ಗುಂಟೆ ಮಾತ್ರ) of land which has been sold in favour of 11th defendant as per Ex.D-20 and item No.5 is dismissed.

It is hereby declared that the plaintiff is entitled to 1/6th share in the suit schedule item No. 1 to 3, 6 and 7 by metes and bounds.

Further it is hereby declared that the plaintiff is entitled to 1/6th share to the extent of remaining land i.e., measuring 3 acres 3.5 guntas of land in the suit schedule item No. 4 by metes and bounds. (ದಾವಾ ಐಟಂ ನಂಬರ್ 4 ರಲ್ಲಿ 11ನೇ ಪ್ರತಿವಾದಿಗೆ ನಿ.ಡಿ. 20 ರಂತೆ ಮಾರಾಟ ಮಾಡಿದ ಎರಡು ವರೆ ಗುಂಟೆ ಜಮೀನನ್ನು ಹೊರತುಪಡಿಸಿ ಉಳಿದ ಜಮೀನಿನಲ್ಲಿ ಮಾತ್ರ ವಾದಿಗೆ 1/6 ನೇ ಭಾಗ ಬರಬೇಕೆಂದು ಆದೇಶ ಇಟ್ಟಿರುತ್ತೇನೆ.)

By considering the nature of the suit there is no order as to cost.

Draw preliminary decree accordingly.

(Dictated to the stenographer directly on computer, corrected by me then the Stenographer has taken print out, after taking printout corrected, signed and then Judgment pronounced by me in open court on 16th day of March 2019.)

(Smt. Radha.S)
Prl. Civil Judge & JMFC.,
Gubbi.

ANNEXURE

1. Witnesses examined on behalf of plaintiff-

P.W.1 : V. Anuradha.

2. Documents marked on behalf of plaintiff-

Ex.P.1 to 11 : RTCs

Ex.P.12 : Certified copy of mutation register extract M.R. No. 19/2006-07.

Ex.P.13 : Certified copy of mutation register extract M.R. No. 58/2008-09.

Ex.P.14 : Certified copy of mutation register extract M.R. No. 31/1997-98.

Ex.P.15 to 18 : RTCs.

Ex.P.19 : Certified copy of sale deed dated 22-03-2006.

Ex.P.20 : Certified copy of sale deed dated 01-04-2009.

3. Witnesses examined on behalf of defendants-

D.W.1 : N.V. Ramachandrappa.

D.W.2 : Mahalingappa.

D.W.3 : S. Gurubasavaiah.

D.W.4 : N.M. Baburao.

4. Documents marked on behalf of defendants-.

Ex.D.1	:	Original copy of registered sale deed dated 03-01-2005.
Ex.D.2	:	Certificate of Registration of society.
Ex.D.3 to 8	:	RTCs
Ex.D.9	:	Certified copy of mutation register M.R. No. 35/2004-05.
Ex.D.10	:	Tax paid receipt.
Ex.D.11	:	Certified copy of sale deed dated 01-04-2009.
Ex.D.12	:	RTC for the year 2016-17.
Ex.D.13	:	Certified copy of mutation register extract M.R.No. 58/2008-09.
Ex.D.14	:	Tax paid receipt.
Ex.D.15	:	Original copy of registered sale deed dated 22-03-2006.
Ex.D.16	:	Endorsement.
Ex.D.17	:	Tax paid receipt.
Ex.D.18	:	S.B.I. Bank Account extract.
Ex.D.19	:	Special Power of Attorney.
Ex.D.20	:	Original copy of registered sale deed dated 17-09-1998.
Ex.D.21 & 22	:	RTCs
Ex.D.23 & 24	:	Tax paid receipt.

(Smt. Radha.S)
Prl. Civil Judge & JMFC.,
Gubbi.