

IN THE COURT OF THE SENIOR CIVIL JUDGE AND
JMFC., AT PAVAGADA.

Present :- Sri.HANUMANTHAPPA.M.A., LL.B.,
Senior Civil Judge & J.M.F.C.,
Pavagada.

: ORIGINAL SUIT No: 44/2018

Dated this the 11th day of September 2019.

Plaintiffs :

- 1) Smt. Chinnakka
W/o K.Gangadharappa
D/o Narasappa
aged about 46 years,
- 2) Thimmakka
W/o Venkataramanappa
D/o Narasappa
aged about 44 years,
- 3) Smt. Chandrakala
W/o K.Adinarayanappa
D/o Narasappa
aged about 41 years,
All are R/o Kalluru Village,
Lepakshi Mandalam,
Hindupur Taluk,
Ananthapura District,
Andhra Pradesh.
(by Sri.JMB, Adv)

V/s

Defendants:

- 1) Narasappa
S/o Pasulu Gangappa
aged about 71 years,
- 2) Nagaraju
S/o Narasappa
aged about 39 years,

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- Both are R/o Appajihalli Village,
Nagalamadike Hobli,
Pavagada Taluk,
Tumkur District.
- 3) Upendra Reddy
S/o Narasimhareddy Kotha
aged about 55 years,
R/o No.504, CRG Towers
Neharunagar,
Kammam Taluk and District.
Telangana State
(Sri.MMB Adv for D-1 and 2)
(D-3 is placed ex-parte)

Date of institution of Suit : 21-12-2018

Nature of Suit : Partition and Separate possession

Date on which the Judgment
was pronounced : 11-09-2019

Total duration : Year/s Month/s Day/s
00 08 20

(V.HANUMANTHAPPA)
Senior Civil Judge & JMFC.,
Pavagada.

:: JUDGEMENT ::

This suit filed by the plaintiffs against the defendants for the relief of partition and separate possession of claiming their 1/5th share each in the suit schedule properties by metes and bounds and for mense profit and for cost.

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2. The case of the plaintiff may be stated as follows:-

One Pasulu Gangappa was original propositus of the joint family of plaintiffs and defendant NO.1 and 2, he acquired the suit property, he died leaving behind the plaintiffs and defendant No.1 and 2 as his legal heirs. The defendant No.1 is the father of plaintiffs and defendant No.2. The suit schedule property is the ancestral and joint family property of plaintiffs and defendant No.1 and 2. The plaintiffs and defendant No.1 and 2 are in joint possession and enjoyment of the same. After the death of Pasulu Gangappa the revenue documents got changed in the name of defendant No.1, however, he has no exclusive right over the suit property. The plaintiffs being the daughters of the defendant No.1 are entitled to their legitimate share. The defendant No.1 and 2 to defeat the right and share of the plaintiffs have sold the suit properties to the defendant No.3 dated : 02-03-2012 under a registered sale deed, which is not binding on the shares of the plaintiffs. In the 2nd week of October 2018, the plaintiffs came to know about the said alienation after verifying the revenue records of the suit property. In spite of demanding to provide the share of the plaintiffs, the defendant No.1 and 2 refused to allot the share of the plaintiffs. Hence they have filed this suit and accordingly pray for decree the same.

3. After registration of the suit, summons was issued to the defendants. The defendant No.1 and 2 have appeared before the Court through their counsel and they have filed their written statement, but inspite of service of summons under RPAD to the defendant No.3, he remained absent. Hence he placed ex-parte.

4. In the written statement of defendant No.1 and 2, they have admitted the relationship between the parties and nature of the suit properties. They have taken the specific defense that, though the plaintiffs are having their legitimate share but they have not executed the registered sale deed infavour of the defendant No.3, according to them during the last week of March 2012, they were facing financial difficulties and hence the defendant No.3 got introduced himself to the defendants No.1 and 2 and assured that he will provide financial assistance and insist to put their signatures on the blank papers as a security the money, the defendant No.1 and 2 believing it have signed on blank papers, the defendant No.3 make use of the same as created the alleged sale deed on misrepresentation and without disclosing the contents of the sale deed. The defendant No.1 and 2 are also equally having their legitimate share along with the plaintiffs in the suit properties. Accordingly they pray for disposal of the suit by allotting their share.

5. On the basis of pleadings, the following issues have been framed:

ISSUES

1. Whether the plaintiffs prove that, the suit schedule properties are their ancestral and undivided joint family properties ?
2. Whether the plaintiffs further prove that, the sale deed dated : 02-03-2012 executed by defendant No.1 and 2 infavour of defendant No.3 is not binding on the share of the plaintiffs ?
3. Whether the defendant No.1 and 2 proves that, the defendant No.3 has played fraud on them in obtaining their signatures on the blank stamp papers and misuse the same for getting the registered sale deed ?
4. Whether the plaintiffs are entitled to their legitimate share and mesne profit in the suit property ?
5. What order or decree ?

6. In order prove the case of the plaintiff No.3 has been examined as PW-1 and documents marked from Ex. P-1 to 11 and closed their side evidence. To prove the case of the

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defendant No.1 and 2 , they have not entered into witness box..

7. I have heard the arguments, the learned counsel for the plaintiff has also submitted his written arguments, I have perused the same and I have gone through the pleadings, evidence as well as the argument submitted by the learned counsels. My answer to above issues as follows :

Issue No.1	In the Affirmative
Issue No.2	In the Affirmative
Issue No.3	In the Negative
Issue No.4	In the partly Affirmative
Issue No.5	As per the final order for the following.

:: R E A S O N S ::

8. Issue No.1 to 3 :- These three issues are inter connected with one another, hence, I have taken up these issues together for common discussion to avoid repetition of facts and appreciation of evidence.

Under Hindu Law, in India all the Hindus are governed by Hindu Mithakshra School of law unless contrary is proved and also there is presumption that, any property possessed by member of joint family is presumed to be the joint family property unless contrary is proved.

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9. According to plaintiffs the suit schedule property is ancestral and joint family property of the plaintiffs and defendant No.1 and 2. The defendant No.1 and 2 in their written statement have admitted the relationship between the parties and nature of the suit property that it is their joint family property.

10. The plaintiff No.3 has been examined as PW-1 in her affidavit filed in lieu of chief examination she has reiterated the averments of the plaint. The documents produced by the plaintiff has marked from Ex.P-1 to 11.

11. Ex.P-1 is Affidavit sworn by plaintiff No.3 with regarding to G-tree of their family. Since There is no dispute with regarding to relationship between the parties, this document is an admitted document. Ex.P-2 to 7 are the RTC extracts of the suit schedule property from the year 1965 to 1994 which are standing in the name of Pasulu Gangappa S/o Pakeerappa who is the father of the defendant No.1 and grandfather of the plaintiffs and defendant No.2. In the column of this RTC extract the name of one Narasaiah is entered who is none other than the defendant No.1 herein.

12. Ex.P-8 is also RTC extract, it appears after death of Pasulu Gangappa, the name of the defendant entered in the revenue documents which is continued till 2015-16 as per Ex.P-9 the RTC extract. Ex.P-10 is also RTC extract, it

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appears the name of the defendant No.3 entered to an extent 30 acres 32 guntas under MR No.H148/2011-12 dated : 05-10-2018, but the name of the defendant No.2 is also entered to the same extent under MR No.H52/2016-17 under gift. Ex.P-11 is the certified copy of registered sale deed dated : 02-03-2012 it appears the defendant No.1 and 2 have jointly executed registered sale deed infavour of the defendant No.3 to the entire extent of the suit survey number.

13. Since, the plaintiffs are the daughters of defendant No.1 shall be treated as coparceners and they are entitled to their right of share in the ancestral property by birth U/sec. 6 of Hindu Succession Amendment Act 2005. According to the decision of Hon'ble Apex Court in Pulavathi & others v/s Prakash and others, to claim the legitimate share of the daughter as coparcener, they have to fulfill the following facts

- 1) The father must be alive as on 09-09-2005
- 2) The daughter must be alive as on 09-09-2005
- 3) The properties should be available for partition.

14. In this case the plaintiffs are the daughters of the defendant No.1, both daughters and father are alive as on 09-09-2005. As per as available of property for partition is concerned, the defendant No.1 and 2 have alienated the suit property as per Ex.P-11 on 02-03-2012. So, as on the date of

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sale deed the plaintiffs being the coparceners are also having their legitimate share in the coparcenary property. The alienation by the defendant No.1 and 2 itself indicates that the defendant No.2 being the son has joined with the defendant No.1 to alienate the suit property to the defendant No.3, but the plaintiffs are not parties to the said sale deed, even if the defendant No.1 and 2 have alienated the suit property, they had no right to execute the same to the entire extent, at the most they can alienate their share but not the entire extent including the shares of the plaintiffs.

15. Admittedly, the defendant No.1 and 2 have not denied the share of the plaintiffs, the conduct of the defendant No.1 and 2 in supporting the case of the plaintiffs clearly goes to show that they have played fraud on the defendant No.3 by saying that the defendant No.3 has obtained their signatures on the blank papers, but the photographs appears in the sale deed clearly discloses they had been to the office of the Sub-Register to execute the registered sale deed to the defendant No.3, but the they have suppressed the share of the plaintiffs at the time of execution of the registered sale deed infavour of the defendant No.3. At the same time the defendant No.3 who is the purchaser must ascertain the other co-sharers of the land before purchase it. In this case, though the defendant No.3 served with

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summons but he has not appeared before the Court to challenge the case of the plaintiffs. Therefore, the case of the plaintiffs remained unchallenged. Even though the defendant No.1 and 2 have filed their written statement but they have entered into witness box to prove their defense. Therefore, mere filing of the written statement is not sufficient to prove their case. Since they have executed the registered sale deed infavour of the defendant No.3 just because the defendant No.3 has not appeared will not strengthen the case of the defendant No.1 and 2 to allot the their shares and to decide that the defendant NO.3 has obtained signatures on the blank papers, as because the registered sale deed is the document is duly registered in the office of the Sub-Register by following due process of law, unless and until it is set-aside in accordance with law, it cannot be considered it is as void document. But with respect to the shares of the plaintiffs is concerned the said sale deed is not binding on the plaintiffs shares. **Hence, I answer to Issue No.1 and 2 in the Affirmative and Issue No.3 is in the Negative.**

16. Issue No.4 : Since the plaintiffs have proved that the suit schedule property is their ancestral property and they are entitled to their share. Admittedly, the plaintiffs and defendant No.1 and 2 are the coparceners, hence, they are entitled to 1/5th share each in the suit schedule property. In

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this case apart from seeking the relief of partition, the plaintiffs have sought for mesne profits, but they have pleaded in the plaint that they are in joint possession and enjoyment of the suit property along with the defendant No.1 and 2. Under such circumstances the person who is joint possession is not entitled to the relief of mesne profits, if the plaintiffs were evicted from the suit property and enjoying the same by the defendants, then only the plaintiffs are entitled to the relief of mesne profit, but in this case the plaintiffs have pleaded and adduced their evidence that they are in joint possession and enjoyment of the suit property. Therefore, they have entitled to relief of partition only but not entitled for relief of mesne profit. **Hence, I answer to this issue is in the partly Affirmative.**

17. Issue No.5 : In view of my above discussion I proceed to pass following;

:: ORDER ::

Suit of the plaintiffs is hereby decreed in part. The plaintiffs are entitled to 1/5th share each in the schedule property. The relief sought for mense profit is hereby rejected.

No order as to cost.

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Draw preliminary decree accordingly.

(Dictated to the Typist directly on computer, typed by him, corrected, initialed and pronounced by me in the open court on this the 11th day of September 2019)

(V.HANUMANTHAPPA)
Senior Civil Judge & JMFC,
Pavagada.

: ANNEXURE :

WITNESSES EXAMINED FOR THE PLAINTIFF:

PW-1 : Chandrakala

DOCUMENT EXHIBITED FOR THE PLAINTIFF:

Ex.P1 : G-Tree certificate
Ex.P-2 to 10 : RTC extracts
Ex.P-11 : certified copy of sale deed dt 02-03-12

WITNESSES EXAMINED FOR THE DEFENDANTS:

NIL

DOCUMENT EXHIBITED FOR THE DEFENDANTS:

NIL

(V.HANUMANTHAPPA)
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