

KAUK020014082022



**IN THE COURT OF THE PRL. SENIOR CIVIL JUDGE,
KARWAR.**

PRESENT

Smt. Reshma .J. Rodrigues,
M.Com., L.L.M.,
Prl. Senior Civil Judge, Karwar.

Dated this the 23th day of September, 2022

O.S. NO.19/2022

Plaintiff : 1. Smt. Sneha w/o. Suresh Naik,
Age: 52 years, Occ: Housewife,
Permanent R/o. Melinakeri, Arga,
Post Chendiya, Karwar,
now residing at c/o. Devidas T. Naik,
Mahalasawada, Kajubag, Karwar.

[By Sri. SRB., Adv.]

Vs.

Defendant: 1. Sri. Aapu yane Vasu Rama Naik,
Age 84 years, Occ: Agriculture.

2. Sri. Santosh s/o. Aapu Naik,
Age: 54 years, Occ: Agriculture.

3. Sri. Kumar s/o. Aapu Naik,
Age: 54 years, Occ: Agriculture.

4. Sri. Premanand s/o. Aapu Naik,
Aged about 62 years, Occ: Agriculture,
All R/o. Melinakeri, Arga, Karwar.

[D-1 to 4 Ex-parte]

Date of Institution of the suit
: 27.06.2022

Nature of the suit : Suit for Partition

Date of the commencement : 12.08.2022
of the recording of the
evidence

Date on which the judgment : 23.09.2022
pronounced

Total Duration	Year/s	Month/s	Day/s
	00	02	26

(Reshma .J. Rodrigues)
Prl. Senior Civil Judge,
Karwar

J U D G M E N T

This suit is filed by the plaintiff for the relief of Partition and Separate Possession.

2. **The plaint averments in brief are as follows:**

The description of the suit schedule properties is as under:

1) Property situated at Chendiya Village in Baad Circle of Karwar Taluk, the agricultural land bearing Survey No.263 Hissa 4A measuring

00.04.00(four gunthas only) having land revenue of Rs.0.56 and a residential house bearing Chendiya Village Panchayat House in same survey number. The property bounded by:

East : Remaining land of same survey number,
West & North : Survey boundaries,
South : National Highway.

2) $\frac{1}{4}$ th share in compensation awarded and received by the defendants from National Highway-66(17), for acquiring 00-00-12 land and partial house building, well etc. belonging to plaintiff's husband Suresh Aapu Naik.

3. It is submitted that the plaintiff and defendants are the members of one family. The plaintiff is daughter in law of the defendant No.1 and sister in law of the other defendants. The plaintiff is legally married wife of late Sri. Suresh Aapu Naik, who is the son of defendant No.1 and brother of other defendants. The suit property is an agricultural land measuring 0-4-0 in Chendiya village bearing Survey No.263 Hissa 2A which earlier belonged to one Sri. Aravind Vitthal Habbu. The plaintiff's husband Suresh Aapu Naik and the defendants No.2, 3 and 4 have purchased the suit land from Sri. Aravind Vitthal Habbu under the sale

deed registered before Sub-Registrar, Karwar as document No.1648/1998-99, dated 11.02.1999. Accordingly, the same has been mutated in revenue record of Chendiya village bearing Mutation Entry No.9078, dated 3.5.1999 and (1) Suresh Aapu Naik, (2) Santosh Aapu Naik, (3) Kumar Aapu Naik and (4) Premanand Aapu Naik's were entered in the revenue records.

4. It is further submitted that the plaintiff's husband Suresh Aapu Naik has constructed a residential house, drinking water-well, lavatory in said land. One portion of the said constructed house was occupied by plaintiff and her husband and since the day of purchase of the suit land, the plaintiff and the defendants No.2 to 4 are in possession of the suit land. The plaintiff's husband Sri. Suresh Aapu Naik is expired on 26.09.2021. The plaintiff being only living surviving member of the family, her name entered in the revenue record of the suit land under Mutation Entry No.H36/2020-2021, dated 29.01.2022. Thus, the plaintiff and the defendants No.2, 3 and 4 are having equal $1/4^{\text{th}}$ rights in suit properties. The suit schedule properties belong only to the plaintiff and the defendants No.2, 3 and 4. The entire suit schedule properties were possessed, cultivated, enjoyed by the plaintiff and the defendants jointly. Therefore, the plaintiff has $1/4^{\text{th}}$ share right in entire suit schedule properties. The suit schedule properties are not divided

by metes and bounds. The part of the suit land measuring 00-00-12 is acquired by the Special Land Acquisition Officer, NH-66(17). The Land Acquisition Officer has awarded compensation of Rs.48,00,000/- to the defendants No.2, 3 and 4. By giving false information, the plaintiff's husband share of Rs.12,00,000/- has been received by the defendant No.1.

5. It is further submitted that the plaintiff is in peaceful possession and enjoyment, cultivation of the suit properties. The plaintiff was under impression that her $1/4^{\text{th}}$ share of suit properties and full share of compensation amount of Rs.12,00,000/- will be given and her name will be entered in the revenue record of the same and was waiting for execution of partition by metes and bounds. On 13.06.2022, the plaintiff asked to the defendants about the partition of suit properties. In reply, the defendant No.1 arrogantly replied and said that the plaintiff is not at all having any right over the suit properties belong to late Suresh Aapu Nail. The plaintiff's husband Suresh s/o. Aapu Naik is having right, title and interest in $1/4^{\text{th}}$ share in suit schedule properties. Therefore, the present plaintiff being the class-I heir of the late Sri. Suresh s/o. Aapu Naik, the plaintiff has got absolute $1/4^{\text{th}}$ share right title and interest in suit schedule properties and hence, the plaintiff has filed this suit seeking appropriate reliefs.

6. After institution of the suit, suit summons was sent to the defendants No 1 to 4 by RPAD and it was returned as refused. Hence since the summons is duly served hence, the defendants were placed exparte.

7. In order to prove the case of the plaintiff, the plaintiff has got herself examined as P.W.1 and relied upon Exs.P.1 to P.12 documents.

8. The following points arise for my consideration:

1. Whether the plaintiff proves that the suit properties are the joint family properties of plaintiff and defendants?
2. Whether the plaintiff proves that he is entitled for $1/4^{\text{th}}$ share in the suit schedule properties and in the compensation amount ?
3. Whether the plaintiff is entitled for the relief as sought for?
4. What order or decree?

9. My findings on the above points are as follows:

Point No.1 : In the **Affirmative**.

Point No.2 : In the **Affirmative**.

Point No.3 : In the **Affirmative**.

Point No.4 : As per final order,

for the following:

REASONS

10. **Points No.1 and 2:-** These two points are interrelated and interconnected to each other, hence, they are discussed together for common discussion.

11. In order to prove the case of the plaintiff, the plaintiff got herself examined as P.W.1 and filed her affidavit in lieu of chief examination. By way of documentary evidence, the plaintiff has produced Ex.P.1 is the RTC of property bearing Survey No.263/4A wherein an extent of 03.04.00 is jointly standing in the names of the plaintiff and defendants and an extent of 00-00-12 land is acquired for National Highway-66(17).

12. Ex.P.2 is the Copy of Mutation Register No.H36/2021-22 mutating the names of the plaintiff and defendants to the Ex.P.2 property measuring 03.04.00 extent, Ex.P.3 is the Death Certificate of

Suresh Apu Naik, Ex.P.4 is the Income Certificate and Ex.P.5 is the Residential Certificate of the plaintiff, Ex.P.6 is the Certified copy of Petition in D.V. Case No.79/2019, Ex.P.7 is the Certified copy of Order-sheet in Cril. Misc.No.79/2019, Ex.P.8 is the Certified copy of Petition in D.V. Case No.32/2021, Ex.P.9 is the Certified copy of Order-sheet in Cril. Misc.No.32/2021, Ex.P.10 is the Certified copy of Family Members Surviving Certificate, Ex.P.11 is the Ration Card. These documents satisfactorily establish the relationship between the plaintiff and the defendants and also prove that the plaintiff is the surviving legal heir of late Suresh Aapu Naik.

13. In addition, in order to show that the plaintiff is entitled for $\frac{1}{4}^{\text{th}}$ share in the suit property and compensation amount, the plaintiff has produced Ex.P.12 is the Certified copy of Mutation Entry No.9078 which discloses that the suit property has been purchased by Suresh Aapu Naik, Santhosh Aapu Naik, Kumar Aapu Naik, Premanand Aapu Naik jointly on 3/5/99 from its erstwhile owner and they have equal

share in the said properties. In addition, P.W.1 has also stated that there is a house in the said property which is joint possession and enjoyment of the plaintiff and defendants. In view of the death of the husband of the plaintiff who is a joint owner of the suit property, the plaintiff is entitled to her husband's share in the suit property since she has no issues. Hence, the documents produced by the plaintiff satisfactorily establishes that the plaintiff and defendants are entitled for equal share in the suit properties. As far as the cause of action is concerned, the plaintiff has deposed that after the demise of her husband, the defendants are harassing her and have refused her share in the suit properties and hence, sought for partition of her legitimate share in the suit properties.

14. On perusal of the documents produced by the plaintiff and the oral evidence adduced by the plaintiff, I am of the opinion that the plaintiff has adequately proved her case. Even though the defendants have remained absent and have not filed written statement and not contested the case of the

plaintiff, however, the plaintiff has also not lagged behind in adducing adequate oral and documentary evidence in support of her case. The genuineness and admissibility of the documents produced by the plaintiff is not in dispute. Hence, there is no reason to doubt or disbelieve these documents which have got presumptive value. The positive evidence adduced by the plaintiff has remained unchallenged and uncontroverted. Moreover, it is well laid down proposition of law as laid down in ***ILR 2001 KAR 546*** in between ***Smt. Aisha Bi and another vs. M. Shamsheer Khan*** that "In all cases where no written statement has been filed by the defendants, it is neither necessary nor appropriate to direct the plaintiff to adduce evidence in support of the facts pleaded by him in an indiscriminate manner. The Court has to pronounce the judgment and decree the suit if the facts pleaded does not admit of any in-built inconsistency giving rise to two different versions of the fundamental facts. But, even for doing so, the Court has to pass the judgment containing the relevant facts and the reasons for granting the relief." In this case, the

plaintiff has satisfactorily established her case and there is no in built-inconsistency which gives rise to two versions and hence, I do not find the necessity of adducing any further evidence in support of the pleadings. Hence, I answer Points No.1 and 2 in the ***Affirmative***.

15. **Point No.3**:- In view of my findings on points No.1 and 2 in the affirmative, the plaintiff is entitled to the relief sought for in the plaint. Hence, I answer Point No.3 in the **Affirmative**.

16. **Point No.4**:- For the foregoing reasons, I proceed to pass the following:

O R D E R

The suit of the plaintiff is decreed with costs.

The plaintiff is entitled for $\frac{1}{4}$ th(one fourth) share in suit schedule properties by effecting partition by metes and bounds.

The plaintiff is also entitled for $\frac{1}{4}$ th share (one fourth) in the total compensation amount with accrued interest under land acquisition pertaining to the suit schedule properties.

Draw preliminary decree accordingly.

Office to put up case file for final decree proceedings after expiry of the appeal period.

(Dictated to the Stenographer directly on system, typed by her, corrected by me and then pronounced in the open Court on this the **23rd day of September, 2022**)

(Reshma J. Rodrigues)
Prl. Senior Civil Judge,
Karwar

ANNEXURES

1. LIST OF WITNESSES EXAMINED FOR PLAINTIFF :

P.W.1 : Smt. Sneha W/o. Suresh Naik

2. LIST OF WITNESSES EXAMINED FOR THE DEFENDANTS:

- Nil -

3. LIST OF DOCUMENTS MARKED FOR PLAINTIFF :

- Ex.P.1 : RTC
- Ex.P.2 : Copy of M.R.No.H36/2021-22
- Ex.P.3 : Death Certificate
- Ex.P.4 : Income Certificate
- Ex.P.5 : Residential Certificate
- Ex.P.6 : Certified copy of Petition in D.V. Case No.79/2019
- Ex.P.7 : Certified copy of Order-sheet in Cril. Misc.No.79/2019
- Ex.P.8 : Certified copy of Petition in D.V. Case No.32/2021
- Ex.P.9 : Certified copy of Order-sheet in Cril. Misc.No.32/2021
- Ex.P.10 : Certified copy of Family Members Surviving Certificate
- Ex.P.11 : Ration Card
- Ex.P.12 : Certified copy of M.E No.9078

4. LIST OF DOCUMENTS MARKED FOR DEFENDANTS:

- Nil -

Prl. Senior Civil Judge,
Karwar.