

IN THE COURT OF THE CIVIL JUDGE & JMFC,  
HALIYAL.

PRESENT: SRI. Basavaraj G. Sanadi, B.A. LL.B(Spl)  
Civil Judge & JMFC, Haliyal.

**ORIGINAL SUIT NO. 28/2015**  
**DATED THIS 23<sup>rd</sup> DAY OF OCTOBER 2017**

**PLAINTIFF/S** : 1. Smt. Ratna W/o Suresh Bobati,  
Age. 40 Years, Occ: Household,  
& Agriculture, R/o: Nehru Nagar  
Alnavar, Tq & Dist: Dharwad.

2. Kumari. Nanda S/o Suresh Bobati,  
Age. 18 Years, Occ: Student,  
R/o: Nehru Nagar Alnavar,  
Tq & Dist: Dharwad.

(By Sri. A.B. Torangatti Advocate)

-V/s-

**DEFENDANT:** 1. Sri.Ganapati S/o Suresh Bobati,,  
Age: 21 years, Occ: Agriculturist,  
R/o. Guttigeri Galli, Haliyal,  
Tq. Haliyal, Dist. U.K.

(Defendant by VBH Advocate)

|                                 |                                                               |
|---------------------------------|---------------------------------------------------------------|
| Date of institution of the suit | 09-03-2015                                                    |
| Nature of the suit              | Suit for declaration,<br>partition and separate<br>possession |
| Date of commencement of         | 26-08-2015                                                    |

|                                           |            |        |      |
|-------------------------------------------|------------|--------|------|
| recording of evidence                     |            |        |      |
| Date on which the Judgment was pronounced | 23-10-2017 |        |      |
| Total duration                            | Years      | Months | Days |
|                                           | 02         | 01     | 20   |

**(Basavaraj G.Sanadi),**  
Civil Judge and JMFC  
Haliyal.

### **JUDGMENT**

The plaintiffs have filed this suit for Partition and Separate Possession in respect of suit property in agricultural land bearing Block No. 167 of Guttigeri village and Block No. 88/2 Situated at Haliyal.

#### **2. The brief facts of plaintiff's case are as follow :-**

Plaintiffs have averred in the plaint, that the following properties are the joint family properties.

A) The Agriculture land bearing Block No. 167 measuring 2-37-00 assessed at Rs. 1.41 Paisa situated at Gulligeri village, Haliyal Hobali, Tq. Haliyal (U.K).

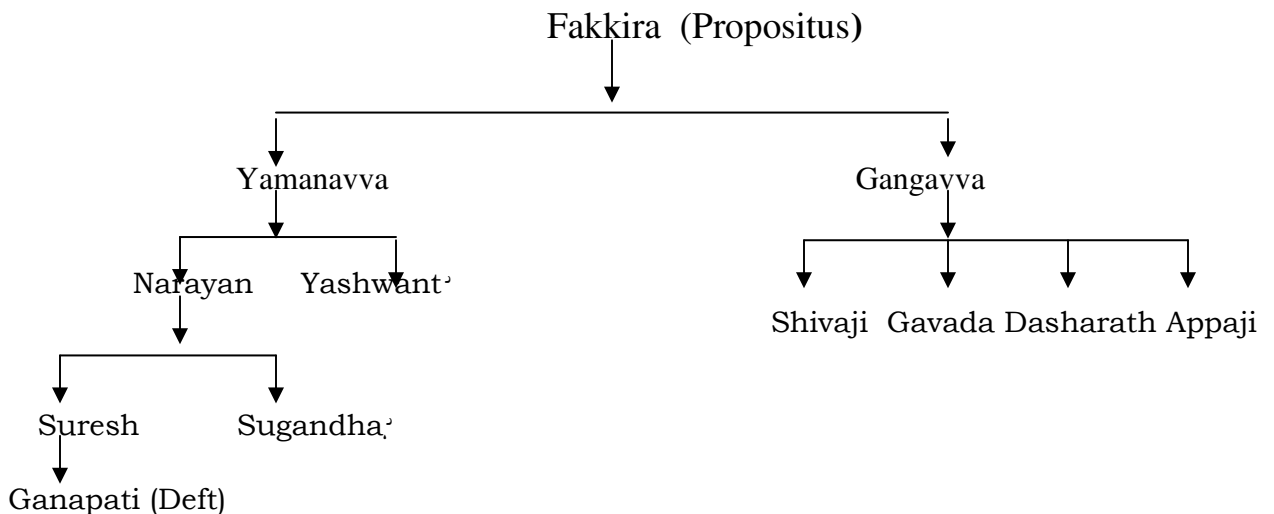
B) The Agriculture land bearing Block No.: 88/2 measuring 3-11-00 Assessed at Rs. 4.40 Pisa situated at Haliyal, Haliyal Hobali, Tq.Haliyal (U.K).

3. The plaintiffs and the defendant are the members of Hindu undivided joint family. Suit properties are the properties of the deceased Sri. Suresh S/o Narayan Bobati who is the husband of plaintiff No.1 and father of plaintiff No.2 and defendant. It is submitted that the deceased Sri. Suresh S/o Narayan Bobati was the owner of suit scheduled properties. The said deceased Sri. Suresh S/o Narayan Bobati was married with one Smt. Malapuri (Surekha) Suresh Bobati. Due to the said wedlock he had a son by name Ganapati S/o Suresh Bobati who is the defendant in this suit. At the age of 3-4 months of the defendant, his mother Smt. Malapuri(Surekha) Suresh Bobati and first wife of deceased Sri. Suresh S/o Narayan Bobati was expired on 14-02-1994 at Guttigeri Galli Haliyal. After the death of Smt. Malapuri(Surekha) W/o Suresh Bobati, the deceased got married with the plaintiff No.1 as there was nobody to look after and to maintain the defendant who was of the age of 6 months. Sri. Suresh S/o Narayan Bobati expired on 23-07-2000 at Guttigeri Galli, Haliyal at the residence of plaintiffs.

4. After the death of Sri. Suresh S/o Narayan Bobati, due to difference of opinion between the family members of deceased Sri. Suresh S/o Narayan Bobati plaintiffs settled at Alnavar. But the defendant after obtaining the death certificates of Sri. Suresh S/o

Narayn Bobati and Smt. Malapuri (Surekha) W/o Suresh Bobati who are the deceased father and mother of defendant, got entered his name to the suit properties claiming that he is the only legal heir to his deceased parents by giving false information to the concerned revenue authorities. But plaintiffs are also the legal heirs of deceased Sri. Suresh S/o Narayan Bobati. The said entry in the suit properties is not binding on them. The plaintiff No.1 also gave an application to issue a legal heir ship certificate in their name along with defendant to Tahashildar, Dharwad but the Tahashildar has orally informed to get the suitable orders from the competent court of law. Hence plaintiffs are constrained to file instant suit for the relief of declaration, partition and separate possession in respect of suit properties.

5. In response of the summons issued by this court, the defendant appeared through counsel and filed written statement denying the averments of plaint. Further contended that the genealogy of the family of the defendant is as under.



6. It is further submitted that the propositus Fakkira had two wives by name first wife Yamanawwa and second wife Gangawwa. Yamanawwa had two sons by name Narayan and Yashwant. Gangawwa had four sons by name Shivaji, Gavada, Dasharath and Appaji. Son of Yamanawwa had two children by name Suresh and Sugandha and deceased Suresh is the father of defendant. Deceased Suresh had married Malapuri @ Sulekha in the year of 1992 and defendant was born to the said couple in the year of 1993. Further submitted that deceased Suresh had met with road accident and since he sustained injury over the head he became insane and thereafter he committed suicide. Paternal grand mother has brought him up. Since deceased Suresh had become insane in accident he had not married for second time as contended by the plaintiff No.1. Plaintiffs are not concerned to the family of defendant and they are not residing in Haliyal but they are residing in Alnavar of Dharwad taluka. Plaintiffs have not made all the family members as necessary party to the suit. Hence prayed to dismiss the suit.

7. On the Basis of the above pleadings of the both parties following issues are framed.

1. Whether the plaintiffs prove that, plaintiffs and defendant are the members of the joint family?

2. Whether the plaintiffs further prove that, the suit schedule properties are ancestral and joint family properties of plaintiffs and defendant and they are having the joint possession and the enjoyment of the same?
3. Whether the plaintiffs further prove that the entry made in name of defendant in revenue records of suit properties and M.R.No H11 dtd. 22-09-2014 are not binding upon the share of plaintiffs?
4. Whether the plaintiffs further prove that they are entitled  $\frac{1}{2}$  share over the suit schedule properties?
5. Whether the defendant proves that suit is not maintainable either in law or facts?
6. Whether the plaintiffs are entitle the relief as sought for ?
7. What order or decree ?

8. The plaintiffs in order to prove their pleadings of plaint against the defendant, plaintiff No. 1 has been examined herself as PW-1 by way of filing her affidavit in lieu of examination in chief and produced documents at Ex.P. 1 to Ex.P. 9, further examined one witness as PW2 and closed their side evidence. The defendant to substantiate his contention has been examined as DW-1 by way of filing his affidavit in lieu of examination in chief and produced documents at Ex. D. 1 to 4 and closed his side evidence. Hence the case is posted for arguments.

9. I have heard the argument canvassed by learned counsels for plaintiffs and defendant, learned advocate for the defendant has filed written argument. Perused the evidence adduced and documents placed on record.

10. My answer to the above issues as here under:

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

### **REASONS**

11. **Issue No. 1 and 2 :** As these issues are interconnected each other I have taken up them together for common discussion to avoid repetition. It is the specific contention of the plaintiffs that, they are the joint family members and suit properties are undivided Hindu joint family properties of the plaintiffs and defendant. Plaintiff No. 1 is wife of deceased Suresh Bobati and plaintiff No. 2 is their daughter. Deceased Suresh Bobati got married this plaintiff No. 1 after death of his first wife and that

time this defendant was of four months child. Since there was difference of opinion between plaintiff and family members of deceased Suresh Bobati she is residing in Alnavar. But defendant after obtaining the death certificates of Sri. Suresh S/o Narayn Bobati and Smt. Malapuri (Surekha) W/o Suresh Bobati who are the deceased father and mother of defendant got entered his name to the suit properties claiming that he is the only legal heir to his deceased parents by giving false information to the concerned revenue authorities. But they are also the legal heirs of deceased Sri. Suresh S/o Narayan Bobati. The said entry in the suit properties are not binding on them. The plaintiff No.1 also gave an application to issue a legal heir ship certificate in their name along with defendant to Tahashildar Dharwad but the Tahashildar has orally informed to get the suitable orders from the competent court of law. Hence, the burden of proving all these aspect is heavily casts upon the plaintiffs.

12. In order to prove their claim, the plaintiff No. 1 herself examined as PW-1 and by way of filling affidavit, in lieu of chief examination and reiterated the same facts narrated in the plaint. In support of her oral evidence she produced documents at Ex.P. 1 to 9. Ex.P. 1 is the RTC of Survey No. 88/2 of Haliyal which is standing in the name of deceased Suresh Bobati and Sugandha Panotkar jointly to the extent of half share in the said property. Ex.P. 2 and 3 are the RTC of Sy.No. 167 of Guttigeri village where the names of deceased Suresh Bobati and Sugandha Panotkar are

appearing. Ex.P 4 is the MR No. H11 dated 22-09-2014 of Guttigeri village which reveals that after death of deceased Suresh Bobati name of defendant has been entered to the property bearing Sy.No. 167. Ex.P. 5 is the death certificate of one Sri. Suresh Narayan Bobati. Ex.P.6 is the death certificate of Malpuri @ Surekha Bobati. Ex.P 7 is the adhaar card of plaintiff No 2 which reveals that her name is Vandana S Bobati and her date of birth is shown as 1995. Ex.P 8 is the adhaar card of plaintiff No 1 which reveals that her name is Ratna S Bobati. Ex.P 9 is the election card of plaintiff No 1 which reveals that her name is Ratna W/o. Suresh Bobati. P.W 2 also deposed in support of the case of plaintiffs.

13. On perusal of the RTC extract with respect to suit property at Ex.P. 1 to 3 it appears that, the property bearing Sy.No. 88 and 167 are standing in the name of deceased Suresh Bobati and defendant also. Hence, it appears that suit properties are ancestral property of deceased Suresh Bobati. PW 1 and 2 have been cross examined by defendant counsel. Though they have admitted in their cross examination that they have not produced any documents to show that marriage between plaintiff No. 1 and deceased Suresh Bobati taken place, they have stated that at the time of marriage no photography is done and said marriage was taken place in temple. Further admitted that deceased Suresh Bobati had met with an accident and he became insane. However, plaintiff has produced Ex.P. 7 to 9 aadhaar

cards and election card of plaintiffs, which reveal that they belong to Babati family. Ex.P. 9 shows that plaintiff No 1 is wife of deceased Suresh Bobati. But it is specific contention of the defendant that plaintiffs are not concerned to the family of deceased Suresh Bobati as he became insane in the accident he did not get marry to the plaintiff No. 1 as alleged in the plaint. Defendant to prove his contention has been examined as DW 1 and reiterated contention of written statement and produced documents at Ex. D.1 to 4 which are the death certificates of his father and mother and RTC of suit property.

14. DW 1 has been cross examined by plaintiff counsel and in his cross examination he admitted that his mother by name Surekha was died in 1994 when he was about 3-4 months child and further admitted that the name of husband of plaintiff No1 is shown as Suresh Bobati in Ex.P. 9 and so also Ex.P. 8. Further admitted that suit properties are ancestral properties of his father and further denied the suggestion made by the defendant counsel.

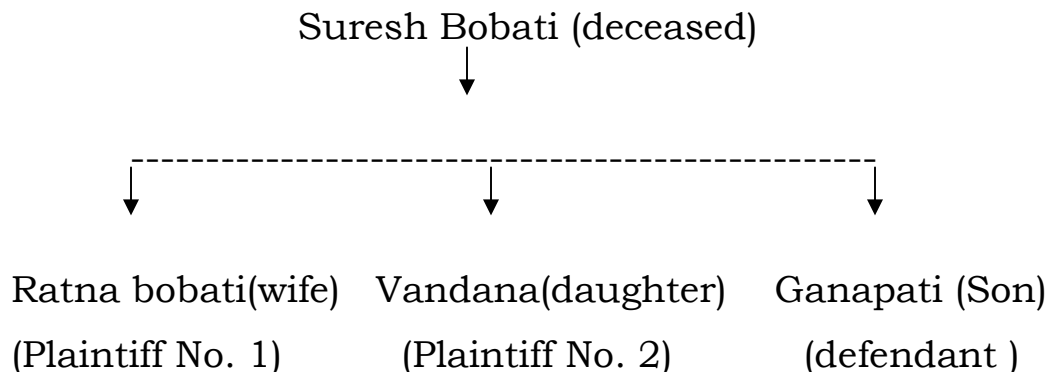
15. Now on perusal of entire evidence, it appears that suit properties are admittedly ancestral properties of deceased Suresh Bobati. But it is a strong contention of the defendant that plaintiffs are not concerned to this family. No doubt Ex.P. 7 to 9 are not proper documents to reveal genealogy of deceased Suresh Bobati. But they are sufficient to realize the name, father's name, husband's name and surname of the person to whom so ever they

belong. Moreover, in Indian culture no woman will dare to say any stranger as her husband for any benefit unless there are some unavoidable and coercion circumstance. On perusal of facts and circumstances of this case it is clear that the first wife of deceased Suresh Bobati and mother of defendant was died when defendant was about 3-4 months baby. Hence, it is quite common in the society that if a mother dies living behind her small child, father of such child will remarry to maintain and to look after small baby, having regard with such facts and circumstances and after going through the evidence of both parties it is clear that the deceased Suresh Bobati got married plaintiff No 1 after death of his first wife. Moreover P.W 1 and 2 have stated that said marriage was taken place in temple and no photos were taken. In the Hindu tradition when second marriage, after death of wife or husband, takes place, it happens in very simple manner in presence of limited family members. Hence considering all these facts I am of the opinion that, plaintiffs have established their case that they are also family members of deceased Suresh Bobati. On the other hand defendant has not led any evidence to disprove the same. Hence, I answer issue No. 1 and 2 in the affirmative.

**16. Issue No. 3 :** It is a specific contention of the plaintiff that MR No. H11 dated 22-09-2014 and other entry in extract of suit property are not binding on their share. Since plaintiffs have proved that they are also joint family members of deceased Suresh Bobati and suit properties are his ancestral. Therefore, they are

also having right to inherit the property of deceased Suresh Bobati along with the defendant. Hence, the documents which create the right only in the name of defendant as the legal heir of deceased Suresh Bobati are not binding to the extent of share of plaintiffs also. Accordingly, I answer issue No. 3 in the affirmative.

**17.Issue No. 4 and 6** : As these issues are interconnected each other, I have taken up together for common discussion to avoid the repetition. Plaintiffs have claimed half share in the share of deceased Suresh Babati in suit properties. But plaintiff No. 1 being widow and plaintiff No. 2 being daughter of deceased Suresh Bobati are not having right that of coparcener share because deceased Suresh Bobati admittedly died in 1994, plaintiff No. 2 though she is daughter of deceased Suresh Bobati, as per the amended provision of Hindu Succession Act she will not get share equal to son. i.e. defendant as her father Suresh Bobati was died much prior to amendment to section 6 of Hindu succession act. But both the plaintiffs are entitled for the notional share as follow;



$1/6^{\text{th}}$  $1/6^{\text{th}}$  $4/6^{\text{th}}$ 

Defendant being son he will get half share as coparcener. In addition he will get  $1/6^{\text{th}}$  share along with plaintiffs. Both the plaintiffs will get  $1/6^{\text{th}}$  share each. Therefore, plaintiffs are entitled for their share as shown above but not as they claimed. Accordingly, I answer issue No. 4 and 6 in partly affirmative.

**18.Issue No. 5** : It is the specific contention of the defendant that suit of the plaintiff is hit by non joinder of necessary party and there is no cause of action to the plaintiff's suit. Defendant has shown the genealogy of family of deceased Suresh Bobati and it is his contention that all the members of genealogy tree of propositus Fakkira should have been made as necessary party. But plaintiffs have filed suit for partition only in respect of share of the deceased Suresh Bobati. On perusal of Ex.P. 1 to 3 and Ex.D. 3 and 4 it appears that name of other legal heirs of propositus Fakkira are appearing in the RTC of suit properties and as far as the claim of the plaintiff is concerned, it is only to the extent of share of deceased Suresh Bobati. Moreover, defendant has not produced any document to show the real genealogy of propositus Fakkira is as it is contended in written statement. Hence, question of non joinder of necessary party does not arise. As far as the cause of action is concerned plaintiffs have specifically stated that when defendant has declined to give their share in the suit property in the year 2014 and 2015 they have filed a suit against

the defendant. Hence, it appears that cause of action has been arisen to the plaintiffs to file this suit. Accordingly, I answer issue No. 5 in Negative.

**19. Issue No. 7** : In view of my finding on Issue no. 1 to 6 as discussed above I am of the considered opinion that the suit of the plaintiffs is entitled to be decreed in part. Accordingly I proceed to pass the following:

### **ORDER**

The suit of plaintiffs is hereby decreed in part with cost.

It is declared that the plaintiffs are entitled for 1/6<sup>th</sup> share each in the suit property by meets and bounds under Sec. 54 of Civil Procedure Code.

The actual division of suit properties by meets and bounds can be made by resorting to section 54 of CPC.

The defendant can also get division of his respective share by paying necessary court fee accordingly.

Since suit is between the members of the family, parties are directed to maintain their respective cost.

Draw Preliminary Decree Accordingly.

(Directly dictated to the typist copyist on computer and typed by her, revised by me and then pronounced in the open court, on this 23<sup>rd</sup> day of October 2017)

**((Basavaraj G.Sanadi),**  
Civil Judge and JMFC  
Haliyal.

**ANNEXURE**

**1. Number of witnesses examined for plaintiffs:**

P.W.1 : Ratna Suresh Bobati  
P.W.2 : Laxmi Gundu Hallukar

**Number of witnesses examined for defendants:**

D.W. 1 : Ganapati S/o Suresh Bobati.

**3. List of documents exhibited for plaintiffs:**

Ex.P. 1 to 3 : RTC  
Ex.P. 4 : MR Entry of H11  
Ex.P.5 & 6 : Death Certificates  
Ex.P.7 & 8 : Aadhaar Cards  
Ex.P.9 : Identity card

**4. List of documents exhibited for the defendant:**

Ex.D. 1 & 2 : Death Certificates  
Ex.D. 3 and 4 : RTCs

**(Basavaraj G.Sanadi),**  
Civil Judge and JMFC  
Haliyal.