

KAUK620009862016



IN THE COURT OF PRL. CIVIL JUDGE & JMFC.,
AT: HONNAVAR.

Present:- Sri Chandrashekhar.E. Banakar.
B.A., L.L.B., L.L.M.,
Prl. Civil Judge & JMFC.,
Honnavar.

O.S.No. 81/2016.

Dated this the 3rd day of January, 2023.

Plaintiff : 1. Hanami W/o Hanmanta Gouda. (Died)
2. Shivamma @ Sema W/o Ganapati Gouda,
Aged about: 50 Years,
Occupation: Farmer and Housewife,
R/o: Sadhara.

(By Sri. ___H.U.N.,___, Adv.)

V/s

Defendants : 1. Yogini W/o Ganapaiah Gouda,
Aged about: 40 Years,
Occupation: Housewife,
R/o: Kharva Kolhagaddhe ,
Tq: Honnavar .
2. Devi W/o Hanmanta Gouda. (Died)
3. Roshan Raghuveer Shanbhaga,
Aged about: 48 Years,
Occupation: Business,
R/o: Kavalakki , Tq: Honnavar .

4. Manjunath Ramaraiah Shet,
Aged about: 60 Years,
Occupation: Farmer,
R/o: Kharva ,
Tq: Honnavar .
(Ex-parte)
5. Bhavani Thimmappa Gouda ,
Aged about: 50 Years,
R/o: Nathageri , Kharva ,
Tq: Honnavar .
6. Ajay Shrinivas Shanbhag ,
Aged about: 34 Years,
Occupation: Business ,
R/o: Kharva Kolhagaddhe ,
Tq: Honnavar .

(Defendant No.1 & 2 By Sri. S.V.A., Adv.)

(Defendant No.3,5 & 6 By Sri. M.M.J., Adv.)

ORDER ON PRELIMINARY ISSUE

(ADDITIONAL ISSUE NO.1)

The plaintiff has filed this suit against defendants for relief of declaration that she is the legally wedded wife of late Hanmanth s/o Nagappa Gowda and also sought for the relief of partition and declaration.

2. In response to the suit summons the defendant No.1 to 3, 5 and 6 have caused their appearance through their advocates.

3. Thereafter, my learned predecessor in office had framed the issues and additional issue and directed to hear the additional issue as preliminary issue.

4 I have heard the learned advocate for the plaintiff and learned advocates for the defendant Nos. 1 to 3, 5 and 6. I have also perused the pleadings and documents.

5. The additional issue, which is treated as preliminary issue reads as follows

"Whether the plaintiffs prove that this Court is having jurisdiction to entertain the suit in the present form?"

6. My answer to the aforesaid preliminary issue is as under:

"This court has jurisdiction to try the suit, for the following reasons."

REASONS

7. Before going into the merits of the case, it is proper and necessary to read the prayer sought in the plaint. For ease, I have reproduced the prayer sought in the plaint as follows,

"_____prayer_____."

8. On perusal of the prayer sought in the plaint, it appears that the plaintiff is praying to declare her to be the legally wedded wife of late Hanmanth s/o Nagappa Gowda. Under this plaint, the plaintiff has also prayed for partition and declaration. By keeping the prayers sought in the plaint, let me discuss about section 9 of CPC. For ease, I have reproduced section 9 of CPC as follows,

**"9. Courts to try all civil suits unless barred.—
The Courts shall (subject to the provisions herein contained) have jurisdiction to try all**

suits of a civil nature excepting suits of which their cognisance is either expressly or impliedly barred."

9. As per Section 9 of the Code, in all types of civil disputes, the civil courts have inherent jurisdiction unless a part of that jurisdiction is carved out from such jurisdiction, expressly or by necessary implication by any statutory provision and conferred on other tribunal or authority.

10. In Dhruv Green Field Ltd. vs Hukam Singh, reported in (2002)6 SCC 416, the Hon'ble Supreme Court of India has held as follows,

"10. In the light of the above discussion, the following principles may be restated:

(1) If there is express provision in any special Act barring the jurisdiction of a civil court to deal with matters specified thereunder the jurisdiction of an ordinary civil court shall stand excluded.

(2) If there is no express provision in the Act but an examination of the provisions contained therein leads to a conclusion in regard to exclusion of jurisdiction of a civil court, the court would then inquire whether any adequate and efficacious alternative remedy is provided under the Act; if the answer is in the affirmative, it can safely be concluded that the jurisdiction of the civil court is barred. If, however, no such adequate and effective alternative remedy is provided then exclusion of the jurisdiction of the civil court cannot be inferred.

(3) Even in cases where the jurisdiction of a civil court is barred expressly or impliedly, the court would nonetheless retain its jurisdiction to entertain and adjudicate the suit provided the order complained of is a nullity."

11. It could be seen from the prayer sought for in the plaint that the plaintiffs have filed this suit against defendants praying to declare that the plaintiff No. 1 is the legally wedded wife of late Hanmanth w/o Nagappa Gowda and also declaration and partition. None of the defendants have taken the contentions of ouster of jurisdiction of this Court to grant the relief sought in this suit. But, my learned predecessor in office had framed the additional issue No.1 suo moto.

12. On perusal of section 9 of CPC and judgment cited above, it is clear that unless and until any special Act barring the jurisdiction of a civil court to deal with matters specified thereunder, the Civil Court has jurisdiction to try all the suit which are in the nature of civil. No such special Act is brought to the knowledge of this Court. Moreover, no special Act bars the Civil Court to grant the relief of declaration about status under section 34 of the Specific Relief Act. Therefore, this Court has jurisdiction to grant the relief sought in the plaint. With these observations, I proceed to answer the additional issue No. 1 in the **Affirmative.**

ORDER

The present suit is maintainable and this Court has jurisdiction to try the case.

For Cross examination of the PW1.

Call on: 02/02/2023.

Sd/-

**Prl. Civil Judge & JMFC.,
Honnavar.**