

**IN THE COURT OF THE CIVIL JUDGE,  
AT : KUMTA.**

FORM No.9  
(CIVIL)  
TITLE SHEET  
FOR  
JUDGMENTS IN  
SUITS (R P 91)

**P R E S E N T**

**Sri. Madhusudhana D.K., B.A., LL.B.,  
Civil Judge & J.M.F.C., Kumta.**

**14<sup>th</sup> day of January 2014  
Original Suit No : 73/1997**

**PLAINTIFF/S : Krishna Narayan Naik  
Major, Occ: Agriculturist,  
R/o Harneer, Taluka:Kumta.**

**(By Advocates Sri.S.G.Shastri/  
Sri S.M.Bhagwat.)**

- Vs -

**DEFENDANT/S : 1. U.F.M. Tipayya Narayan Naik,  
Major, Agriculturist  
R/o Harneer, Taluka: Kumta( deceased)**

His legal heirs:

1a) Mohan Tipayya Naik,  
Age 59 years, Agriculturist  
R/o Harneer, Taluka:Kumta (deceased)

His legal heirs;

1 (a) I Nagaveni Mohan Naik,  
R/o Harneer, Taluka:Kumta.

- 1 (a) II Anita Nagaraj Naik  
R/o Kudavalli, Kallabbe, Taluka:Kumta.
- 1 (a) III Raju Mohan Naik,  
R/o Harneer, Taluka:Kumta.
- 1 (a) IV Kavita Manoj Naik,  
R/o Gaddemane,Karki,Taluka:Kumta.
- 1 (a) V Naveen Mohan Naik,  
R/o Harneer, Taluka:Kumta.
- 1 (b) Ganesh Timmppyaya Naik,  
Age: 57 years,  
R/o Near Sea Shore Road,  
Dhareshwar,Taluka:Kumta.
- 1( c) Kusum Kom Keshav Naik,  
Age: 53 years, R/o Navilgoan,  
Taluka: Honnavar.
- 1(d) Ishwar Tipayya Naik,  
Age: 53 years,  
R/o Chitte, Dhareshwar, Taluka: Kumta.
- 1(e) Padmavati Kom Ganapati Naik,  
Age: 57 years, Tailor Bogribail,  
Taluka: Kumta.
- 1(f) Shivanand Tipayya Naik,  
Age: 49 years, Tempo Onwer,  
Royalkeri, Honnavar.
- 1(g) Rama Tipayya Naik,  
Age: 47 years, Teacher,  
Opp: Taluka Panchayat Office  
Yellapur.

1(h) Madhukar Tippayya Naik,  
Age: 44 years, R/o Harneer, Kumta.

2. Ganapati Narayan Naik, Major  
R/o Harneer, Kumta. (deceased)

Legal Heirs:

2a) Iramma Kom Ganapati Naik,  
Age: 72 years, R/o Harneer, Kumta.  
(deceased)

2b) Lalita Kom Subraya Naik  
56 years, Kondli, Taluka: Siddapur.

2c) Gopal Ganapati Naik  
Age:54 years, R/o Harneer, Kumta.

2d) Narashimha Ganapati Naik,  
Age: 52 years, Ambikanagar,  
Dandeli,(deceased)

His legal heirs:

2(d)(1) Pushpa Narashimha Naik  
46 years,

2(d)(2) Madhura Narashima Naik  
Age:15 years,  
Her minor Guardian mother 2(d)(1)  
Both are r/o Ambikanagar, Dandeli,  
Taluka: Haliyal.

2e) Narayan Ganapati Naik,  
Age: 49 years, R/o Harneer,  
Taluka: Kumta.

2f) Sumana Manjunath Naik,  
age: 45, Baad, Hubbangeri, Taluka: Kumta.

2g) Chandrakala Sudhakar Naik,  
Age: 40 years, Talgeri, Chandavar,  
Taluka: Honnavar.

2h) Prakash Ganapati Naik,  
Age: 42, r/o Harneer, Taluka:Kumta.

3. Nagamma Kom Venkatraman Naik,  
Major, Agriculturist, R/o Harneer,  
Taluka:Kumta.

4. Balakrishna Venkatraman Naik,  
Major, Agriculturist, R/o Harneer,  
Taluka:Kumta.

5. Karunakar Venkatraman Naik,  
Major, Agriculturist, R/o Harneer,  
Taluka:Kumta.

6. Radha Kom Ishwar Naik, Major,  
Agriculturist, R/o Mirjan, Taluka:Kumta.  
(deceased) Her legal heirs:

6a) Ishwar Laxman Naik, Major  
Occ: Service, R/o Mirjan, Kumta.

6b) Dinesh Laxman Naik, Major  
Occ: Agriculturist, R/o Mirjan, Kumta.

6c) Savita Laxman Naik, Major  
R/o Mirjan, Kumta.

6d) Maheshwar Ishwar Naik (Minor)

His minor guardian 6(a)

R/o Mirjan, Kumta.

7. Bhavani Kom Suresh Naik, Major  
Agriculturist, Bobruwada, Ankola.
8. Sharada Kom Pandurang Naik,  
Major, Karki Paik Pavinkurva,  
Taluka:Honnavar.
9. Shanta Kom Ramachandra Naik, Major,  
Agriculturist, R/o Salkod paik Mailebail,  
Taluka: Honnavar.
10. Saraswati Kom Sudhakar Naik,  
Major, Agriculturist, Taluka: Sorab
11. Ramachandra Nagappa Naik, Major  
Pensioner and Agriculturist,  
R/o Prabhat Nagar, Taluka: Honnavar  
(deceased) (Legal Heirs)
- 11a) Yashodha Kom Ramachandra Naik,  
65 years,
- 11b) Vinayak Ramachandra Naik,  
38 years,
- 11c) Anush Ramachandra Naik,  
36 years,
- All are R/o Opp:Saint Antoni High School  
Prabhat Nagar, Honnavar.
- 11d) Poornima Kom H.V.Naik,  
Age:33 years, No.45, 2<sup>nd</sup> cross, 2<sup>nd</sup> stage,  
Gangotri Lay-out, Mysore

12) Pandurang Nagappa Naik, Major,  
Retd. and Agriculturist,  
R/o Kumta (Deceased)  
His legal heirs:

12a) Bhavani Kom Pandurang Naik  
64 years,

12b) Anil Pandurang Naik, 31 years,  
R/o Dikshit Road, Kumta.

12c) Vijayalaxmi D/o Panduranga Naik  
Age: 38 years, R/o Jali, Taluka: Bhatkal.

12d) Mangala Kom Ravindra Naik,  
32 years, B.D.O. quarters, Prabhat Nagar,  
Honnavar.

13. Shridhar Nagappa Naik,  
Service R/o Laxmi Nivas,  
Near Vittal Mandir  
Honiya Extn. Post Balekundri, Samba-  
Belgaum.

14. Gangadhar Nagappa Naik,  
Service A.C. Office, Sirsi.

15. Vithal Nagappa Naik,  
Service, A.C. Office, Sirsi.

16. Shankar Nagappa Naik, Major,  
Prl. Civil Judge, District Court Campus,  
Mangalore.

17. Gopalkrishna Nagappa Naik, Major,  
Agriculturist, Room No.B-1-2, Century Rayon  
Housing Society, Ullas Nagar-3, Kalyan Dist:  
Thane.

18. Dayanand Nagappa Naik, Major,  
Agriculturist, Suyog A/7, 1<sup>st</sup> Floor, Konkan  
Sahakar Vasahat Housing Colony,  
Varsova Link Road, Andheri(W)  
Bombay-58

19. Umabai Kom Vasudev Naik, Major,  
C/o T.N.Naik, Teacher chal,  
Hosur Siddapur.

20. Shivanand Tipayya Naik, Major,  
Agriculturist, Harneer, Kumta.

**Defendant No.1(b) to (d) (f) to (h) by Sri  
M.L.Naik advocate**

**Defendant No.1(a) 1 to 5 Exparte**

**Defendant No.4, 6(a) 7 to 10, 12 to 15, 18  
and 19 Sri.D.S.Bhat Advocate)**

**Defendant No.6(b) M/G by defendant 6(a)**

**Defendant No.2(a) to (h) Absent**

**Defendant No.11(a) to (d) Exparte**

**Defendant No.2(d) 1, 2 16, 17 Exparte**

|                                                                |                                                |
|----------------------------------------------------------------|------------------------------------------------|
| Date of Institution of the suit                                | 19-9-1997.                                     |
| Date of order to restoration in<br>Civil Misc.No.1/2007        | 19-11-2009                                     |
| Nature of the suit (suit on<br>Pronote, suit for Declaration & | Suit for Partition and Separate<br>Possession. |

|                                                   |              |               |            |
|---------------------------------------------------|--------------|---------------|------------|
| Possession,<br>Suit for Injunction, etc.          |              |               |            |
| Date of commencement of<br>recording of evidence. | 29-06-2006.  |               |            |
| Date on which the judgment<br>was Pronounced.     | 14-01-2015   |               |            |
| Total Duration                                    | Year/s<br>05 | Month/s<br>01 | Days<br>26 |

(Madhusudhana D.K.)  
Civil Judge, Kumta.

### J U D G M E N T

This suit was originally filed by the plaintiff for partition and separate possession of 1/5<sup>th</sup> share in the suit schedule item No. A, B and C properties against the defendant No. 1 to 20 and in fact this suit was disposed of by this Court on merits by Judgment and Decree dated 02-09-2006 and subsequently the legal heirs of deceased defendant No.1 have filed a Civil Misc. No. 1/2007 and my predecessor in office by his order dated 19-11-2009 set aside the judgment and decree and once again restored the suit to its original number and commenced evidence of the legal heirs of defendant No.1. After restoration of the suit various parties to the original suit were reported as died and plaint is amended for not less than 2-3 times only to bring the



legal representatives of deceased parties. In addition the legal heirs of defendant No.1 have examined D.W.2 and got marked Ex.D4 to Ex.D13 and he has undergone cross-examination. Thereafter, the parties have addressed arguments and case has been posted for judgment.

2. In order to avoid unnecessary repetition of condensing the pleadings, I will take the help of my learned predecessor in office who has earlier rendered judgment and decree in this very same suit and I will interfere in this judgment only when the occasion has arisen.

3. The summarization of pleadings are as follows:

This is a suit filed by the Plaintiff against the Defendants in respect of the suit schedule properties and sought for the relief of Partition and Separate Possession, for cost and such other relief/s.

4. The brief facts of the case of the Plaintiff are as here under:

The Plaintiff has disclosed his relationship with the Defendants. It is also his contention, except the property bearing Sy.No. 78, all the other properties belonging to the

father of the Defendant Nos.1 and 2 by name Sri. Narayan Nagappa Naik, who expired on 13-7-1961. It is also his contention, subsequent to death of the said Sri. Narayan Nagappa Naik, his elder son i.e. the 1<sup>st</sup> Defendant has acted as a Manager of the Hindu Undivided Family. Accordingly, himself and all the Defendants continued as a member of joint family. It is also his contention, in view of nature of joint family and that the 1<sup>st</sup> Defendant being Manager has also made an application in Form No.7 on behalf of himself and on behalf of all the other members of the family. Accordingly, the same has also been granted in the name of the 1<sup>st</sup> Defendant. Hence no separate application have also been filed by him and other Defendants.

5. It is also his contention, that the 1<sup>st</sup> Defendant being the manager of the family use to collect usufructs from the schedule properties and out of which, the property bearing Sy.No.78 measuring to an extent of 1-6-0 has also been purchased during 1965 in the name of the 1<sup>st</sup> Defendant and the same has also been continued to be in possession and enjoyment of all the members. It is also his contention, the House No.30 described at 'B' schedule was not sufficient and separate House No.31 has also been constructed out of the earnings of the joint family. It is

also his contention, the property disclosed at 'C' schedule i.e. Power Tiller and Pump Set has also been purchased out of the joint family properties. Accordingly, it is the contention of the Plaintiff, that the suit schedule properties being the joint family properties, himself and Defendant Nos.1 and 2 are entitle for  $1/5^{\text{th}}$  share each and Defendant Nos.3 to 10 in all are entitle for  $1/5^{\text{th}}$  share and the Defendant Nos.11 to 19 in all are entitle for  $1/5^{\text{th}}$  share.

6. It is also the contention of the Plaintiff, in view of difference in woman folk, himself, Defendant Nos.1 to 10 use to reside in the ancestral house separately. It is also his contention, in spite of separate residence, all along they have continued to be in joint possession of all the properties. It is also his contention, that the 1<sup>st</sup> Defendant being the manager of the family and having in possession of usufructs of the properties has also purchased a Tempo in the name of his sons and he has also fixed the liability and responsibility on the other members of the family. It is also his allegation, without knowledge and consent of other members of the family, that the 1<sup>st</sup> Defendant has also transferred the house property No.31 in the name of his son by name Sri. Shivanand Tippayya Naik. It is also his contention, in

spite of repeated request and demand to effect partition, the 1<sup>st</sup> Defendant has refused to effect partition and separate possession. Accordingly, having no other alternative, he has approached the Court with this suit. Accordingly, with all other grounds and with specific cause of action, by relying upon necessary documents the Plaintiff prayed for a DECREE.

7. After due service of summons, the 1<sup>st</sup> Defendant herein has got filed a detailed written statement and also specifically denied all the allegations made out in the plaint and also contended, that the suit of the Plaintiff is not maintainable, as the Plaintiff and the other Defendants are not entitle for Partition and Separate Possession. It is also his contention, that the Plaintiff has not included the properties in his name and until and unless inclusion of those properties, the Plaintiff is not entitle for the relief of Partition and Separate Possession. It is also his contention, that the Plaintiff is not entitle to an extent of 1/5<sup>th</sup> share as prayed in the plaint. It is also his contention, except the property bearing Sy.No. 78, all the remaining properties are not the joint family properties and as he being in continuous possession and enjoyment of the same, has also made application before the Land Tribunal and occupancy right has also been granted in his

favour. Accordingly, neither the Plaintiff nor the Defendant Nos.2 to 19 are entitled for any share out of the schedule properties.

8. The 1<sup>st</sup> Defendant herein has also specifically denied with regard to purchase of all the other schedule properties out of the earnings derived from the property bearing Sy.No.78. The 1<sup>st</sup> Defendant herein has also made clear, that the 'C' schedule properties purchased in the name of one Sri. Ishwar Tippayya Naik, and that he alone repaid the loan amount in his name. Accordingly, contended, that the said Sri. Ishwar Tippayya Naik, is also the necessary party. The 1<sup>st</sup> Defendant herein has also denied with regard to purchase of the Tempo in the name of Defendant No.20 and also contended, that the said Tempo has also been purchased by his separate income and not from the joint family nucleus. The 1<sup>st</sup> Defendant herein has also specifically denied with regard to joint possession and enjoyment of the suit schedule properties and also contended, that the Plaintiff and the Defendant Nos.2 to 10 use to reside at Hindbail village of Kumta Taluka having separate residence.

9. It is also his contention, that the Defendant Nos.11 to 19 are also not entitled for Partition and Separate Possession. It is

also the contention of the 1<sup>st</sup> Defendant, Smt. Iru Kom Nagappa Naik, got married during 1929 and that she has expired during 1964-65, accordingly, she is not coming under the family members as defined in the Land Reforms Act. Accordingly, with all other grounds and with specific defence, the 1<sup>st</sup> Defendant has also prayed for the relief of Partition in respect of the properties situated at Harneer and Math Gram.

10. The Defendant Nos.2, 4, 11, 12 and 15 have also filed a separate written statement and also conceded the plaint averments and also prayed to include the property bearing Sy.No.17 of Math Gram, accordingly, prayed for Partition and Separate Possession to the respective extent of share.

11. On perusal of the above pleadings, my learned Predecessor has framed the following:

### **I S S U E S**

1. Whether the Plaintiff proves that the suit schedule properties are the joint family properties as alleged in para 2 of the Plaint?

2. Whether the Plaintiff proves that the transfer of the building No.31 which is shown in the plaint 'B' schedule property by the

defendant No.1 in favour of the defendant No.20 is illegal and not binding on him?

3. Whether the defendant No.1 proves that he is the exclusive owner of the suit schedule properties?

4. Whether the plaintiff is entitled to the reliefs which he has claimed in this suit?

5. What order/decreree?

#### ADDITIONAL ISSUES DATED 14-12-1998

1) Whether the defendant Nos.2, 4, 11, 12 and 15 prove that the property in S.No. 17 of Matha village measuring 0-37-0 is also the joint family property and is to be included in the suit property ?

2) Whether the defendant Nos.2, 4, 11, 12 and 15 are entitled to their share in the suit properties? If so, what is their share ?

#### ADDITIONAL ISSUES DATED 1-9-1999

1) Whether the defendant Nos.1, 2, 4, 11, 12 and 15 prove that the properties stated in para 2 of the written statement are also to be included in the suit properties ?

2) Whether the defendant No.1 proves that Ishwar Tippayya Naik is a necessary party as contended in para 6 of his written statement ?

3) Whether the defendant Nos.2, 4, 11, 12 and 15 are entitled to the partition and separate possession of their share in the suit schedule properties ? If so, what is their share ?

12. Heard the learned Counsels.

13. Perused the entire case record.

14. My findings on the above Issues are as hereunder:-

|            |                |
|------------|----------------|
| Issue No.1 | : AFFIRMATIVE, |
| Issue No.2 | : AFFIRMATIVE, |
| Issue No.3 | : NEGATIVE,    |
| Issue No.4 | : AFFIRMATIVE, |

#### ADDITIONAL ISSUES DATED 14-12-1998

|                  |                |
|------------------|----------------|
| Addl. Issue No.1 | : AFFIRMATIVE, |
| Addl. Issue No.2 | : AFFIRMATIVE, |

#### ADDITIONAL ISSUES DATED 1-9-1999

|                  |                                                 |
|------------------|-------------------------------------------------|
| Addl. Issue No.1 | : AFFIRMATIVE,                                  |
| Addl. Issue No.2 | : NEGATIVE,                                     |
| Addl. Issue No.3 | : AFFIRMATIVE,                                  |
| Issue Nos.5      | : As per the final order,<br>for the following: |



### **REASONS**

**15. ISSUE Nos.1 & 3 :-** Here I would like to say that, my learned predecessor in office has elaborately discussed and gave findings on all the issues casted by him upon the pleadings of rival parties and my later predecessor in office who allowed Civil Misc. 1/2007 has restored this suit on the ground urged by the legal heirs of deceased 1<sup>st</sup> defendant that, after the Counsel representing defendant No.1 has retired from representing that defendant, the Court notice was issued on the deceased 1<sup>st</sup> defendant who died on 26-06-2003 and my first predecessor who had decreed this suit on 02-09-2006 and issuance of notice on a deceased person is a nullity and no opportunity was given to the 1<sup>st</sup> defendant or his legal representatives to adduce evidence that was the sole consideration for the Judge who allowed Civil Misc. 1/2007 to restore this suit to its original number. But as early as in the year 2001 the very 1<sup>st</sup> defendant has filed Misc. appeal 47/2001 before the Senior Civil Judge, Honnavar against the rejection of I.A.No.IV filed by the defendant No.1 seeking temporary injunction and Hon'ble Senior Civil Judge by his Order dated 03-12-2005 was pleased to reject the appeal by imposing cost of Rs. 1,000/- on the 1<sup>st</sup> defendant and he was also pleased

to hold that, defendant No.1 is interested only in dragging the matter to see that the plaintiff could not get the property and that Judgment and Decree of Misc. Appeal 47/2001 is available in the records of this suit but the Judge who allowed the Civil Misc. 1/2007 has not acted as a prudent man and he has danced to the tune of legal heirs of deceased defendant No.1 in spite of specific observations made by Senior Civil Judge against the conduct of 1<sup>st</sup> defendant and to restore the suit which was already decreed by my predecessor in office as early as on 02-09-2006 the Judge who passed the restoration order has acted very strangely for the best reason known to him.

16. Therefore, my burden is only to give findings on the Issue No.3 which was placed the burden on the legal heirs of defendant No.1 and as I have already stated, the D.W.2 has given his oral evidence and marked Ex.D4 to Ex.D13. I am also of the same opinion as my predecessor who rendered Judgment and decree on 02-09-2006 that 1<sup>st</sup> defendant has failed to prove that the suit schedule properties are not the exclusive properties of 1<sup>st</sup> defendant and in respect of remaining issues I will keep the findings given by my learned Predecessor remain intact and in addition to it, I will discuss the evidence offered by the D.W.2 to

arrive at the finding on Issue No.3. Hence I switch over to the findings of my predecessor in office.

17. As these issues are inter related, hence, taken up together for consideration.

18. It is the specific contention of the Plaintiff, the suit schedule properties are the joint family properties and subsequent to the death of one Sri. Narayan Nagappa Naik, the respective revenue entries have also been transferred in the name of the 1<sup>st</sup> Defendant as a Manager of the joint family. The said contention has also been supported and conceded by the Defendant Nos. 2, 4, 11, 12 and 15. But, the case of the Plaintiff has been seriously disputed by the 1<sup>st</sup> Defendant as if the suit schedule properties are the self acquired properties and that neither the Plaintiff nor the other Defendants are entitle for Partition and Separate Possession.

19. In order to prove the case on hand, the Plaintiff has sworn to an affidavit and the same is treated as evidence of PW-1. During the course of his evidence, he has reiterated the entire plaint averments without any difference by denying the contention taken up by the contesting Defendant. In addition to that, he has also produced and relied upon as many as 26

documents as per Ex.P1 to Ex.P26. Accordingly, he has also given a clear and detailed evidence with regard to the contents of the respective documents. In order to prove the nature of acquisition of the schedule properties, particularly, for having granted the occupancy right in the name of the 1<sup>st</sup> Defendant and for having given a statement in a Proceeding No. LRT-SR-147, the certified copy of the Statement dated 21-9-1976 has been produced as per Ex.P1. On consideration, the Plaintiff has given consent to grant the occupancy right in the name of the 1<sup>st</sup> Defendant as he being the Manager of the joint family.

20. The Plaintiff has also produced the certified copy of the Order dated 21-9-1976, for having confirmed the occupancy rights in favour of the 1<sup>st</sup> Defendant in respect of various items of the properties situated at Harneer and Math village as per Ex.P2. On consideration of the Order dated 21-9-1976 makes it clear, particularly, for having confirmed the occupancy rights in the name of the 1<sup>st</sup> Defendant as a Manager of the joint family. For having made an application in Form No.7, the Plaintiff has also produced the certified copy of the Form No.7 as per Ex.P26. On consideration, the said application came to be filed by the 1<sup>st</sup> Defendant as a Manager of the joint family and also requested

the concerned authorities to grant the occupancy rights in his name in respect of various items of the properties situated at Harneer and Math village of Kumta Taluk. In the said application, he has also disclosed the names of all the members of the joint family including the names of the Defendants. In this regard, the learned Counsel for the Plaintiff has given much importance to the contents of Ex.P26, wherein, the 1<sup>st</sup> Defendant himself has conceded that he is the Manager of the joint family and also confirmed the occupancy rights in his favour.

21. For having issued Form No.10 in the name of the 1<sup>st</sup> Defendant, the same has also been produced as per Ex.P3. On consideration, the contents of Form No.10 corresponds with the Order dated 21-9-1976. For having effected the respective revenue entries, the Plaintiff has also produced the certified copies of various Mutation Registration Extracts as per Ex.P4 to Ex.P9. On consideration, the contents made in the Mutation Register Extracts, makes it clear, particularly, for having transferred the entries in the name of the 1<sup>st</sup> Defendant as a Manager of the joint family. The contents of Ex.P7 to Ex.P9 also make it clear, particularly, for having borrowed a loan from Vyavasaya Seva Sahakari Sangh, Dhareshwar, and for having

repaid the loan. For having effected proper entries in the R.T.C. Extracts, the Plaintiff has also produced various R.T.C. Extracts in respect of the suit schedule properties as per Ex.P10 to Ex.P23. On consideration, all these R.T.C. Extracts discloses, the name of the 1<sup>st</sup> Defendant.

22. In addition to that, particularly, with regard to the existence of the House Properties bearing No.30 and 31 i.e., 'B' schedule properties, the Plaintiff has also produced two House/Land Tax Assessment Lists as per Ex.P24 and Ex.P25, respectively. On consideration, Ex.P24 discloses the name of the 1<sup>st</sup> Defendant in respect of the House Property bearing No.30. The Ex.P25 discloses the name of one Sri. Shivanand Tippayya Naik in respect of the House No.31. In this regard, it is the allegation of the Plaintiff, purposefully, in order to avoid his share in respect of the House Property and without his knowledge the 1<sup>st</sup> Defendant got transferred the House Property in the name of his son by name Sri. Shivanand Tippayya Naik.

23. Here I will interfere in the findings of my predecessor because when he was gave findings the 1<sup>st</sup> defendant intentionally not adduced any evidence and my predecessor has rightly pointed out that, in spite of specific plea and contentions, 1<sup>st</sup> defendant

has not come forward to give evidence, but at a later stage, D.W.2 has adduced oral and documentary evidence and therefore, that observation of my predecessor regarding not giving evidence of defendant No.1 is not proper and I have to give my findings on the appreciation of evidence on behalf of defendant No.1.

24. Learned Counsel for the deceased defendant No.1's legal heir argued that, suit schedule properties are self acquired properties of defendant No.1 and Sy.No.78 ( item No. 13 of suit 'A' schedule) is the self acquired property and house was constructed and transferred to the name of the son of 1<sup>st</sup> defendant and all the defendants have contributed to the construction and therefore, it is the self acquired property of defendant No.1.

25. D.W.2 has filed his affidavit evidence as per the written statement filed by his father deceased defendant No.1. In the cross-examination he has deposed as follows:

**" It is true that, Narayan Nagappa Naik is my grand father. I do not know the suggestion that, all the suit schedule properties were mentioned in the name of my grand father Narayan Nagappa Naik**

in the RTC. It is true that, deceased 1<sup>st</sup> defendant is my father. It is true that, my father's name was mentioned in the records of suit schedule property. I say that, after the death of my grand father the name of my father was entered as a cultivator and not as an owner. If asked have I gone through the old records of suit schedule property before filing of written statement, my answer is I have not enquired. .... If asked on what capacity my father's name was entered in the records, my answer is I do not know and I say that, as per form No.7 my father's name was entered. If it is asked before mentioning of my father's name in the form No.7 whose names were entered, I say that, other 4-5 persons names were entered. I cannot say on what capacity my father has filled the form No.7. It is true that, my father's avocation was only to cultivate suit schedule properties as a cultivator. It is true that, my father did not know any other occupation except agriculture.... I am also cultivating suit schedule properties as a cultivator and not as a owner. It is true that, except suit schedule properties our family has no other properties. defendant No.1 (f) has got a Tempo. Before purchasing of that Tempo he was also doing agriculture. If it is suggested



that, at the time of purchase of Tempo plaintiff and all the defendants lived together, I say that, only our 5 brothers residing with our father. It is true that, our livelihood was only based on cultivation of suit schedule property. .... It is true that, our family has only got suit 'B' schedule item No.1 house. If it is suggested that, since that house was not convenient for all members we have built house in suit schedule 'B' item No.2, I say that, that house was built because there was a pumpset in it. If asked when the plaintiff has purchased my affidavit second para stated properties, I say that, either in the year 1965 or 1968 he has purchased in cultivator's capacity. It is true that, those properties are in the possession of plaintiff. If it is suggested that, suit schedule properties are ancestral properties and all the plaintiff and defendants are having equal rights, I say that, since the record stood in my father, they are our father's self acquired properties."

Therefore, the oral evidence of son of defendant No.1 shows that, he has no knowledge how the family has acquired properties and according to his own version before his father's name was entered in form No.7, 4-5 persons names were entered in the

form No.7 and his father and all the legal heirs of defendant No.1 have no other properties and they are deriving the income of the suit schedule properties and they have also built the house claimed by them when joint family was existed. The contention of D.W.2 that, since properties are standing in the name of his father, they are self acquired properties of his father is not tenable and defendant No.1 has no independent income to acquire the properties and therefore, I am also in unison of the opinion expressed by my predecessor regarding Issue No.3 in holding the same in the Negative. Now I keep what my predecessor has expressed in his Judgment earlier.

26. Under the circumstances, I am of the considered opinion, that, the Plaintiff herein has successfully proved with regard to nature of acquisition of the properties, particularly, in the name of the 1<sup>st</sup> Defendant, as the same are joint family properties, and that the 1<sup>st</sup> Defendant is the Manager of the joint family. On the other hand, the 1<sup>st</sup> Defendant herein has utterly failed to establish, that the suit schedule properties are his self-acquired properties. Hence, I answer **ISSUE No.1 IN AFFIRMATIVE & ISSUE No.3 IN NEGATIVE.**

**27. ISSUE No.2:-** It is also the contention of the Plaintiff, without his knowledge and consent the 1<sup>st</sup> Defendant being the Manager of the joint family has transferred the House No.31 shown at 'B' schedule in the name of his son by name Sri. Shivanand Tippayya Naik. Accordingly, it is the contention of the Plaintiff, that the said Transfer is illegal and not binding on him. In view of the discussion made at Issue Nos.1 and 3 and for the reasons stated there under and in continuation of the same, I am of the considered opinion, that the contents of Ex.P25 discloses the name of one Sri. Shivanand Tippayya Naik, who is the Defendant No.20. As against to the contention of the Plaintiff, neither the 1<sup>st</sup> Defendant nor the Defendant No.20 has placed any record, particularly, for having acquired the House No.31 as their self acquired property. In this regard, it is the specific contention of the Plaintiff, that the House No.30 is the ancestral joint family house property and out of the income derived from other schedule properties, the House No.31 has also been constructed. In view of the defence of the 1<sup>st</sup> Defendant, the said contention remained unchallenged and undisputed. Under the circumstances, the contention taken up by the Plaintiff is liable to be accepted, as the transfer of house property No.31 in the name of the said Sri. Shivanand Tippayya Naik, by the 1<sup>st</sup>

Defendant is not binding on the Plaintiff and the said aspect has also been proved by the Plaintiff beyond all probabilities. Hence, I answer **ISSUE No.2 IN AFFIRMATIVE.**

**28. ADDITIONAL ISSUE No.1 DATED 14-12-1998 &**

**ADDITIONAL ISSUE No.1 DATED 1-9-1999:-** In addition to conceding the case of the Plaintiff, it is the defence of the Defendant Nos.2, 4, 11, 12 and 15, that the Plaintiff has not included the property bearing Sy.No.17 measuring to an extent of 0-37-0 of Math village. Accordingly, it is the contention of these Defendants, inclusion of the property bearing Sy.No.17 is very much necessary and without which the suit of the Plaintiff is liable to be dismissed. Accordingly, with this contention, the Defendant Nos.2, 4, 11, 12 and 15 have also sought for the relief of Partition and Separate Possession. In order to prove the defence, the 4<sup>th</sup> Defendant by name Sri. Balakrishna Venkatraman Naik, has sworn to an affidavit and the same is treated as evidence of DW-1. During the course of his evidence, he has reiterated the entire defence by conceding the contents of the plaint. In addition to that, it is also his evidence, that the property bearing Sy.No.17 measuring to an extent of 0-37-0 of Math village is also to be included and subjected for Partition.

In addition to that, he has also produced and relied upon as many as 3 documents as per Ex.D1 to Ex.D3. Accordingly, he has also given a clear and detailed evidence with regard to the contents of the respective documents.

29. In order to establish, that the property bearing Sy.No.17 measuring to an extent of 0-37-0 is originally belonging to the said Sri. Narayan Nagappa Naik, he has also produced the Original Gram Namoon No. 7.7.A & 12 as per Ex.D1. In addition to that, he has also produced two R.T.C. Extracts in respect of the property bearing Sy.No. 17, particularly, for the years 1973-74, 2005-2006 as per Ex.D2 and Ex.D3, respectively. On consideration, the contents of Ex.D2 discloses, the name of one Sri. Tippayya Narayan Naik and the R.T.C. Extract produced at Ex.D3 discloses the name of one Sri. Ishwar Bin Tippayya Naik. The 4<sup>th</sup> Defendant herein has also not been subjected for cross-examination. Thereby, the entire oral and documentary evidence available on record remained unchallenged and undisputed.

30. During the course of his submission, the learned Counsel for the Plaintiff has also conceded to include the property bearing Sy.No.17 and that the same may also been subjected for Partition and Separate Possession as contended by the Defendant

Nos.2, 4, 11, 12 and 15. As already discussed above, even the 4<sup>th</sup> Defendant has not been subjected for cross-examination by the other Defendants. Under the circumstances, I am of the considered opinion, that the Defendant Nos.2, 4, 11, 12 and 15 have also proved the Issues beyond all probabilities by placing sufficient oral and documentary evidence. Hence, I answer **ADDITIONAL ISSUE No.1 DATED 14-12-1998 & ADDITIONAL ISSUE No.1 DATED 1-9-1999 IN AFFIRMATIVE.**

**31. ADDITIONAL ISSUE No.2 DATED 1-9-1999:-** As against to the contention of the Plaintiff, it is the contention of the 1<sup>st</sup> Defendant, one Sri. Ishwar Tippayya Naik, is also a necessary party, as the said Sri. Ishwar Tippayya Naik has purchased 'C' schedule properties out of his own earnings as well as from borrowing loan from him. It is also his contention, his son Sri. Ishwar Tippayya Naik, has also repaid the said loan amount out of his own earnings. In view of the 'C' schedule properties, the 1<sup>st</sup> Defendant herein has taken up the contention, inclusion of his son by name Sri. Ishwar Tippayya Naik, is also very much necessary. In spite of the said defence, the 1<sup>st</sup> Defendant has not come forward to place either oral or documentary evidence in

that regard. Under the circumstances, I am of the considered opinion, that the 1<sup>st</sup> Defendant herein has utterly failed to prove the **Additional Issue No.2. Hence, I answer ADDITIONAL ISSUE No.2 DATED 1-9-1999 IN NEGATIVE.**

**32. ISSUE No.4 & ADDITIONAL ISSUE No.2 DATED 14-12-1998 & ADDITIONAL ISSUE No.3 DATED 1-9-1999:-**

As these issues are inter related, hence, taken up together for consideration. In view of nature of acquisition of the schedule properties and as the same stands in the name of the 1<sup>st</sup> Defendant as a manager of the joint family, it is the specific contention of the Plaintiff, himself, Defendant Nos.1 and 2 are entitle for 1/5<sup>th</sup> share each, Defendant Nos. 3 to 10 in all are entitle for 1/5<sup>th</sup> share and Defendant Nos.11 to 19 in all are entitle for 1/5<sup>th</sup> share out of the suit schedule properties. The said contention has also been conceded by the Defendant Nos.2, 4, 11, 12 and 15. In spite of denying and disputing the case of the Plaintiff, the 1<sup>st</sup> Defendant has never chosen to contest the matter. Accordingly, he has not placed either oral or documentary evidence to negative the contention of the Plaintiff nor the Defendant Nos.2, 4, 11, 12 and 15.

33. On consideration of the materials available on record, neither the Plaintiff nor the Defendant Nos.2, 4, 11, 12 and 15 have utterly failed to place any piece of material in respect of 'C' schedule properties. Under the circumstances, I am of the considered opinion, that the respective parties are entitle for Partition and Separate Possession only in respect of 'A' and 'B' schedule properties including the property bearing Sy.No.17 measuring to an extent of 0-37-0 of Math village. Under the circumstances, I am of the considered opinion, that the respective parties are entitle for Partition and Separate Possession excluding the 'C' schedule properties. Accordingly, I answer **ISSUE No.4, ADDITIONAL ISSUE No.2 DATED 14-12-1998 & ADDITIONAL ISSUE No.3 DATED 1-9-1999 IN AFFIRMATIVE.**

34. **ISSUE No.5:-** In the result, I proceed to pass the following;

### **ORDER**

**The suit of the Plaintiff is hereby  
DECREED IN PART with costs and for the  
inconvenience caused by the 1<sup>st</sup> defendant  
and his legal heirs, they shall pay**



compensatory costs of Rs.3,000/- to the plaintiff under Section 35-A of Civil Procedure Code.

The Plaintiff, legal heirs of defendant Nos.1 and legal heirs of defendant No.2 are entitle for 1/5<sup>th</sup> share each, the Defendant Nos.3 to 10 and their legal heirs in all are entitle for 1/5<sup>th</sup> share, and the Defendant Nos.11 to 19 or their legal heirs in all are entitle for 1/5<sup>th</sup> share out of 'A' and 'B' schedule properties including the property bearing Sy.No.17 measuring to an extent of 0-37-0 situated at Math village of Kumta Taluk.

No orders in respect of 'C' schedule properties.

The respective parties are also directed to pay required Court fee, if any, if not paid.

Draw Preliminary Decree Accordingly.

(Dictated to the stenographer directly on computer, corrected by me and then pronounced in the open Court on this the 14<sup>th</sup> day of January 2015.)

(Madhusudhana D.K.)  
Civil Judge, Kumta.

**: ANNEXURE :**

**List of witnesses examined for the Plaintiff:-**

P.W.-1 : Krishna Narayan Naik.

**List of witnesses examined for the Defendants:-**

D.W.-1 : Balakrishna Venkatraman Naik.

D.W.-2 : Ishwar Tippayya Naik

**List of documents exhibited for the Plaintiff:-**

Ex.P1 : Certified copy of the Statement before Land Tribunal, Kumta.

Ex.P2 : Certified copy of the Order of Land Tribunal, Kumta,

Ex.P3 : Certified copy of the Form No.10,

Ex.P4 )

to ) Certified copies of the Mutation Register

Entracts,

Ex.P9 )

Ex.P10 )

to ) 14 Certified copies of the R.T.C. Extracts,

Ex.P23 )

Ex.P24 : Copy of House/Land Tax Assessment List,

Ex.P25 : Copy of House/Land Tax Assessment List,

Ex.P26 : Certified copy of the Form No.7.

**List of documents exhibited for the Defendants :-**

- Ex.D1 : Form No.7.  
Ex.D2 : Certified copy of the R.T.C. Extract,  
Ex.D3 : Copy of the R.T.C.Extract.  
Ex.D4 : Certified copy of Sale Deed dated 25-8-1965  
Ex.D5 : RTC extract of Sy.No.61/6  
Ex.D6 : RTC extract of Sy.No.61/5  
Ex.D7 : RTC extract of Sy.No.108  
Ex.D8 : RTC extract of Sy.No.98  
Ex.D9 : RTC extract of Sy.No.23/1  
Ex.D10 : Certified copy of voters list  
Ex.D11 : RTC extract of Sy.No.36/1  
Ex.D12 : House tax Assessment  
Ex.D13 : House tax assessment.

**Kumta,  
14-01-2015**

**Civil Judge, Kumta.**