

KAMS300012132023



**IN THE COURT OF THE ADDITIONAL SENIOR CIVIL JUDGE
AND JMFC AT HUNSUR**

Present: Smt.Anitha, B.A. (Law) L.L.B.,
Addl. Senior Civil Judge & JMFC.,
Hunsur.

Dated this the 29th day of November 2024

OS No.201/2023

- Plaintiffs:
1. Sri.Sunilkumar S., S/o Late Pratima and Late Srikanta M., Aged about 37 years,
 2. Sunitha S., D/o Late Pratima and Late Srikanta M.,Aged about 34 years,

Both are residing at No.419, 7th Cross,
Near Chamundeshwari Temple,
Mahadeshwara Badavane, Mysuru.

(By: Sri.M.Malegowda, Advocate)

-V/s-

- Defendants:
1. Smt. Kamalamma A.,
D/o Late S.Annaiah @ Annegowda,
W/o Papanna, Aged about 63 years,
R/at No.69, 1st Cross, Kattehosuru,
Manchegowdanakoppalu,Vijayanagar,
2nd Stage, Mysuru

2. Sri.Durgeshkumar.A.,
S/o Late S.Annayya
@ Annegowda, Aged about 59 years,
R/at No.748/12A, 5475/B, 3rd Main
2nd Stage,Vijayanagar, Mysuru.
3. Smt.Indra.A., D/o Late S.Annayya
@ Annegowda, W/o Devarajegowda H.A.,
Aged about 51 years,
R/at No. 419, 7th Cross,
Mahadeshwara Badavane,
Kumbarkoppalu,Mysuru.
4. Sri.Dinesh, S/o Govindegowda,
Aged about 53 years, R/at Hussainpura
Village, Bilikere Hobli, Hunsur Taluk,
Mysuru District.

**(Defendant No.1, 2 and 4 are placed exparte,
Defendant No.3 By: Sri.Umesh.M., Advocate)**

1. Date of institution of the suit:	26.08.2023
2. Nature of the suit:	Partition and Possession
3. Date recording of evidence:	03.09.2024
4. Date of pronouncement of judgment:	29.11.2024
5. Duration :	<u>Year/s</u> <u>Month/s</u> <u>Day/s</u>
	01 03 03

(Anitha)

Addl. Senior Civil Judge and JMFC.,
Hunsur.

J U D G M E N T

The plaintiffs have filed this suit against the defendants seeking the relief of partition and separate possession of their joint 1/4th share in the suit schedule properties and also sought for declaration that the sale deed executed by

defendants No.1 to 3 infavour of the 4th defendant dated 21.07.2022 registered before Sub-Registrar, Hunsur bearing document No.HUN-1-03622-2022-23 stored in CD No.HUND-1100 is not binding upon the plaintiffs and also sought for court costs.

2. It is the specific case of the plaintiffs that, one late S.Annayya @ Annegowda and late Jayamma are the grand parnets of the plaintiffs. The couple S.Annayya and Jayamma had totally four children i.e., defendants No.1 to 3 and mother of the plaintiffs by name Prathima.A. The plaintiffs and the defendants No.1 to 3 are the members of the joint family. The 4th defendant is purchaser of item No.2 of the suit schedule property. The plaintiffs further alleged that, the suit schedule properties are the ancestral and joint family properties of themselves and defendants No.1 to 3 and they are in joint possession and enjoyment of the suit schedule properties. The plaintiffs further alleged that, during the lifetime of their mother and their grand parents there was no partition in the family and till now they are in joint possession and enjoyment of the suit schedule properties. Recently the plaintiffs came to know that, defendants No.1 to 3 without the knowledge of their mother and the plaintiffs in order to grab the suit schedule properties got changed the khata into their names. The plaintiffs also came to know that defendants No.1 to 3 have sold suit schedule item No.2 property infavour of the 4th defendant in order to defeat the rights of the plaintiffs. It is

also alleged that, the defendants No.1 to 3 have executed a registered sale deed infavour of the 4th defendant which is registered before Sub-Registrar, Hunsur dated 21.07.2022 bearing document No.HUN-1-03622-2022-23. The said sale deed is not at all binding upon the plaintiffs. Hence, filed the suit against the defendants seeking the relief of partition and separate possession of their legitimate share over the suit schedule properties.

3. After filing of the suit the court issued summons to all the defendants. In pursuance of service of summons the 3rd defendant appeared through her counsel and filed the written statement. Inspite of service of summons defendants No.1, 2 and 4 have not chosen to appear before the court and they have been placed exparte.

4. In the written-statement the 3rd defendant admitted the relationship. She has further admitted that the suit schedule properties are the ancestral and joint family properties of plaintiffs and defendants No.1 to 3 and also admitted that, the plaintiffs are in joint possession and enjoyment of the suit schedule properties. It is also admitted that, till now there is no partition between the plaintiffs and the defendants No.1 to 3 in respect of the suit schedule properties. It is also specific contention that, the defendants No.1 to 3 by colluding with defendants No.4 got created sale deed infavour of the 4th defendant without making the 2nd defendant to know everything about the sale deed. Hence, the

3rd defendant also prayed for equal share in the suit schedule properties.

5. On the basis of the rival pleadings of the parties the court has framed the following:

ISSUES

1. Whether plaintiffs proves that the schedule properties are ancestral and joint family properties of plaintiffs and defendants and available for partition?
2. Whether plaintiffs prove that the defendant No.1 to 3 have sold the suit schedule properties item No.1 property to an extent of 0-08 guntas to the defendant No.4 through registered sale deed dated 21.07.2022 but same is not binding on plaintiffs right of share over the suit schedule properties?
3. Whether plaintiffs are entitled for the relief of partition and separate possession of their 1/4th share in the suit schedule properties?
4. What order or decree?

6. In order to prove the case, the 1st plaintiff stepped into the witness box and examined himself as PW1 and he got marked 10 documents as per Ex.P1 to Ex.P10. On the other-hand the 3rd defendant filed her chief-examination affidavit and examined herself as DW1 and defendants No.1, 2 and 4 have been placed exparte and there is no cross-examination of PW1 and DW1 by their side and there is no evidence of defendants No.1, 2 and 4.

7. Thereafter, heard arguments addressed by learned counsel for the plaintiffs and defendants and perused the case papers. After hearing the arguments and on perusal of the case papers the above issues are answered as hereunder:

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

REASONS

8. **Issue No.1 to 3:** Since these issues are inter connected with each other and needs common discussion on the same set of facts and in order to avoid repetition of facts these issues are taken up together for discussion.

9. This is the suit filed by the plaintiffs against the defendants seeking the relief of partition and separate possession of their legitimate $\frac{1}{4}$ th share in the suit schedule properties. The plaintiffs have also sought for declaration that, the sale deed executed by defendants No.1 to 3 infavour of the 4th defendant in respect of 8 guntas of land in suit schedule item No.2 property is not binding upon them. It is an admitted fact that, one Late S.Annayya @ Annegowda and Smt.Jayamma are the grand-parents of plaintiffs. It is also an admitted fact that, S.Annayya and his wife Jayamma had four children. They are Kamalamma (the 1st defendant), Prathima.A (Mother of the plaintiffs), Durgeshkumar.A. (the 2nd defendant) and Indra.A.(the 3rd defendant). As per the plaintiffs

themselves and defendants No.1 to 3 are the members of Hindu Joint Family. They have specifically alleged that, the suit schedule properties are the ancestral and joint family properties of themselves and the defendants and they are having legitimate share over the same.

10. In order to substantiate the case the 1st plaintiff stepped into the witness box and examined himself as PW1. In the chief-examination affidavit the 1st plaintiff reiterated the plaint averments. In the further chief-examination PW1 deposed that, during the life-time of his grand parents there was no partition in the family of plaintiffs and defendants No.1 to 3. It is further deposed that, the defendants No.1 to 3 colluded with each other and sold suit schedule item No.2 property infavour of the 4th defendant in order deprive their right. In order to prove the case the PW1 got marked the RTC suit schedule item No.1 property which is Sy.No.23/3, measuring 1 acre. This RTC is standing in the name of defendants No.1 to 3 jointly. At column No.10 of this RTC it is mentioned that, as per inheritance bearing No.MR HU/2022-23 the name of the defendant No.1 got mutated. Admittedly, in this RTC the name of plaintiffs mother is missing. Ex.P2 is the RTC in Sy.No.23/6 which is suit schedule item No.2 property. This RTC is standing in the name of 4th defendant. At Column No.10 of this RTC it is mentioned that, as per sale and as per MR H2/2022-2023 dated 03.09.2022 the name of 4th defendant got entered. Ex.P3 is the mutation register extract

bearing No.H4 2020-21. As per this document suit schedule item No.1 property came to be transferred in the name of defendants No.1 to 3. Earlier the same was entered in the name of S.Annegowda. Ex.P4 is the MR H2/2022-23. As per this document an extent of 8 guntas has been transferred in the name of defendant No.4 by virtue of registered sale deed. In order to prove the said sale PW1 got marked the certified copy of sale deed dated 04.07.2022 as per Ex.P5. This sale deed has been executed by defendants No.1 to 3 infavour of defendant No.4. By virtue of this sale deed an extent of 8 guntas in Sy.No.23/3 has been sold infavour of defendant No.4. Ex.P6 is the certificate issued by Tahashildar, Hunsur Taluk about the members of family of the plaintiffs and the defendants. As per this document it is very much clear that, the plaintiffs are the legal heirs of one Prathima.A., who is daughter of S.Annayya and sisters of defendants No.1 to 3. Ex.P7 is the death certificate of S.Annayya which shows that he died on 04.03.2010. Ex.P8 is the death certificate of grandmother of the plaintiffs by name Jayamma dated 20.03.2020. Ex.P9 is the family tree of the plaintiffs. It shows that, the father of the plaintiffs is by name one Late M.Srikanta, is also no more. The plaintiffs are the legal heirs of Prathima.A., who is sister of defendants No.1 to 3.

11. In order to prove the death of their mother PW1 got marked the death certificate of their mother as per Ex.P10. As per this document the mother of the plaintiffs by name

Prathima.A., died on 07.02.2013. As per these documents it is very much clear that, the suit schedule properties are the ancestral and joint family properties of the plaintiffs and the defendants No.1 to 3. It is necessary to note that, the 3rd defendant though filed the written-statement not chosen to cross-examine the PW1. On the other-hand the 3rd defendant also stepped into the witness box and examined herself as DW1. In the chief-examination affidavit she has deposed that, the plaintiffs are her sister's children. Defendants No.1 and 2 are her brothers. Defendant No.3 also deposed that, the suit schedule properties are the ancestral and joint family properties of themselves and defendants No.1 to 3. She has specifically admitted that, the plaintiffs and defendants No.1 to 3 are having 1/4th share each in the suit schedule properties. Admittedly, this witness has not marked any documents.

12. In the cross-examination by counsel for the plaintiff,s DW1 admitted that, the plaintiffs are her sister's children. She has also admitted that, the suit schedule properties are the ancestral properties and they are in joint possession and enjoyment of the suit schedule properties. It is her specific evidence that, herself and the defendants are having 1/4th share each in the suit schedule properties. Admittedly, Ex.P1 RTC and the mutation register extract shows that, the suit schedule item No.1 property has been entered in the name of defendants No.1 to 3, whereas the plaintiffs and their mother has been left out and their names

are not forthcoming anywhere in the documents for the best reason known to defendants No.1 and 2. Defendants No.1, 2 and 4 in spite of service of summons not chosen to appear before the court and they have been placed exparte. The suit schedule item No.2 property is the property purchased by defendant No.4 from the hands of defendants No.1 to 3. The entire case of the plaintiffs remained unchallenged. The plaintiffs have produced sufficient materials which establishes that the suit schedule properties are the ancestral and joint family properties of themselves and defendants No.1 to 3. Admittedly, in Ex.P5 sale deed neither the plaintiffs nor their mother has signed. Therefore, the plaintiffs are entitled for equal share in the suit schedule properties. Accordingly, issue No.1 to 3 are answered in the Affirmative.

13. **Issue No.4:-** In view of the reasons discussed above this court proceeds to pass the following:

ORDER

The suit filed by the plaintiffs against defendants is hereby decreed with costs.

It is held that, the plaintiffs are jointly entitled for 1/4th share in the suit schedule properties.

Further it is held that, defendants No.1 to 3 are entitled for 1/4th share each in the suit schedule properties.

Further, the sale deed executed by defendants No.1 to 3 infavour of the 4th defendant dated 21.07.2022 registered before Sub-Registrar, Hunsur bearing document No.HUN-1-03622-2022-23

stored in CD HUND-1100 is not binding upon the plaintiffs.

Draw preliminary decree accordingly.

As per the decision of Hon'ble Supreme Court of India reported in 2022 SCC Online SC 737 Between Kattukandi Edathil Krishnan V/s Kattukandi Edathil Valsan dated 13.06.2022 the matter is listed for taking steps under Order 20 Rule 18 of CPC. Office to list the matter as FDP by giving fresh number in CIS in order to avoid technicality.

(Dictated to Stenographer, transcribed by her, the transcript corrected by her and then pronounced in the open Court on this the 29th day of November, 2024)

(Anitha)

Addl. Senior Civil Judge and JMFC.,
Hunsur.

ANNEXURE

List of witnesses examined on behalf of the plaintiff:

PW1 : Sunilkumar.S.,

List of documents marked on behalf of the plaintiff:

Ex.P1	:	RTC of Sy.No.23/3
Ex.P2	:	RTC of Sy.No.23/6
Ex.P3	:	MR No.H4/2020-2021
Ex.P4	:	MR No.H2/2022-2023
Ex.P5	:	Certified copy of sale deed
Ex.P6	:	Certificate of members of family of the plaintiffs
Ex.P7	:	Death certificate of S.Annayya
Ex.P8	:	Death certificate of Jayamma
Ex.P9	:	Genealogical Tree
Ex.P10	:	Death certificate of mother of the plaintiffs.

List of witnesses examined on behalf of the defendants:

DW1 : Smt.Indra.A.,

List of documents marked on behalf of the defendants: Nil

(Anitha)

Addl. Senior Civil Judge and JMFC.,
Hunsur.