

Form No.9
(Civil) Title
Sheet for
Judgment in
suits



**IN THE COURT OF II ADDL. CIVIL JUDGE AND JUDICIAL
MAGISTRATE FIRST CLASS AT KUNDAPURA**

Present : SRI. DHANESH MUGALI,
B.COM. LL.B. {SPL}
II Addl. Civil Judge & JMFC,
Kundapura (C/c)

Dated this the 17th day of December, 2021

Original Suit No.397/2016

Plaintiff/s: Philip Fernandes, 66 years
S/o Late Casmir Fernandes
R/o Kodi, Kundapura Kasaba Village
Kundapura Taluk
Udupi District

(By Advocate Sri/Smt. M.S.S.)

//Vs//

Defendant/s: 1. Evelyn Fernandes, 81 years
2. Pauline Fernandes, 72 years
3. Peter Fernandes, 69 years
4. Rocky Fernandes, 63 years
All are children of
Late Casmir Fernandes
All are residents of Kodi
Kundapura Kasaba Village
Kundapura Taluk
Udupi District

**(By Advocate Sri/Smt. H.R.S. for D1 and 4)
(Exparte)**

Date of institution of the suit : 24-11-2016
Nature of the suit : Suit for partition
Date of commencement of
recording of evidence : 22-11-2018
Date on which the
judgment is pronounced : 17-12-2021
Total duration : Years Months Days
05 - 23

JUDGMENT

This suit is filed by the plaintiff against the defendants for the relief of partition in respect of suit 'A' schedule properties.

2. The suit 'A' schedule properties are comprising Sy. 260/1 measuring 0.34 acre, Sy.No. 260/2 measuring 1.10 acre and Sy.No.260/4 measuring 0.11 acre situated in Kundapura Kasaba Village, Baindoor Taluk.

3. **The brief facts as set out in the plaint are as follows:**

The plaintiff has stated that he and defendants are the children of one Casmir Fernandes and Smt. Juvan Fernandes. On 01.03.1974 and prior to that his father was an agricultural tenant in actual

cultivation and enjoyment of the 'A' schedule properties. After commencement of Karnataka Land Reforms Act 1961, his father filed a Form No.7 application to the Land Tribunal, Kundapura claiming occupancy right over the 'A' schedule properties in his individual capacity right and Land Tribunal Kundapura after due enquiry conferred occupancy right over the 'A' schedule properties in favour of his father. Thereafter, the Tahsildar Kundapura has also issued Form No.10 registration certificate pertaining to the said properties in favour of his father. His father executed a registered Will dated 07.10.1986 bearing Doc.No.88/1986/87 of Kundapura , SRO bequeathing Item No.1 of the 'A' schedule properties in his mother favour and Item No. 2 and 3 of 'A' schedule properties in favour of his brother Gregory Fernandes. But, both were died intestate on 26.06.2001 and 10.05.2014 respectively. Gregory Fernandes died unmarried. He and defendants are succeeded the suit 'A' schedule properties and are liable to be divided into 5 fair and equal shares and he is entitled to get one such share. Hence, this suit.

4. In spite of service of suit summons, the defendants No.1 and 4 appeared through their counsel and failed to file written

statement. Hence, they placed *exparte*. Defendants No.2 and 3 could not appear before the Court. Hence, they placed *exparte*.

5. The plaintiff, in order to prove his case, examined himself as PW1 and one witness examined as PW2 and got marked Ex P1 to Ex P4 and closed their side evidence.

6. Heard arguments from the counsel for plaintiff.

7. The points that arise for my consideration are as under:

POINTS

1) Whether the plaintiff further proves that the suit 'A' schedule properties shall be divided into 5 fair and equal shares and he is entitled for one such share?

2) Whether the plaintiff is entitled for the relief sought in the plaint?

3) What decree or order?

8. My findings on the above points are as under:

Point No.1 : In the Affirmative

Point No.2 : In the Affirmative

Point No.3 : As per the final order,

for the following:

REASONS

9. Point No.1 and 2 : These points are interlinked with each other, hence I have taken together for common discussion.

The plaintiff has relied oral evidence of PW1 and PW2 and Ex P1 to Ex P4 to prove his case. PW1 has reiterated plaint averments in his chief examination. PW2 is an attesting witness to the Will dated 07.10.1986. He is one of the brother of plaintiff and defendants and also defendant No.3 in the suit. He has deposed that the 1st defendant has no children. The 2nd defendant is a nun. His father was executed a Will in his presence. Further, he is not seeking any share in the suit 'A' schedule properties and his share should go to equally between plaintiff and defendant No.4.

10. Ex P1 is RTC bearing Sy.No.260/1 measuring 0.34 cents stands in the name of Juvan Fernandes W/o Casmir Fernandes. Ex P2 is RTC bearing Sy.No.260/2 measuring 11.24 acre out of it 1.10 acre stands in the name of Gregory Fernandes and Ex P3 is RTC bearing Sy.No. 260/4 measuring 0.11 acre stands in the name of Gregory Fernandes. On perusal of Ex P1 to Ex P3, it appears that Item No.1 to

3 of suit 'A' schedule properties are stands in the name of deceased Juvan Fernandes and Gregory Fernandes. Both the persons were inherited the respective properties by virtue of Will dated 07.10.1986 executed by late Casmir Fernandes. Ex P4 is material document to show that how the title flows to deceased persons. It is stated that the plaintiff and defendants are legal heirs to Juvan Fernanandes and Gregoy Fernandes. Hence, it is held that the suit 'A' schedule properties are available for partition.

11. The plaintiff has stated that the suit 'A' schedule properties be divided into 5 shares and allot one such share to him. PW2 who is defendant No.3 has relinquished share in favour of plaintiff and defendant No.4. In spite of service of suit summons, the defendants remained exparte. There is no cross examination of PW1 and PW2. Hence, their evidence remained unchallenged and un rebuttable. There are no materials to dis-believe the case of the plaintiff. Hence, the suit 'A' schedule properties be divided into 5 divisions out of it plaintiff is entitled for one share. The defendant No.4 share be divided into plaintiff and defendant No.4. Hence, the suit 'A' schedule properties be divided into 10 divisions out of it

plaintiff is entitled for two shares as his share and one share as a successor of defendant No.4 i.e., 3/10 shares. Similarly, defendant No.4 is also entitled for 3/10 share. Defendant No.1 and 2 are entitled for two shares each. Hence, the plaintiff is entitled for relief sought in the plaint. Hence, I have answered **Points No.1 and 2 in the Affirmative.**

12. **Point No.3:** In view of findings on the above points, I proceed to pass the following:

O R D E R

The suit of the plaintiff is decreed with cost.

The suit 'A' schedule properties be divided into 10 shares out of it the plaintiff is entitled for 3/10 shares.

Defendants No.1 and 2 are entitled for two shares each in suit 'A' schedule properties.

Defendant No.4 is entitled for 3/10 shares in suit 'A' schedule properties.

Draw preliminary decree accordingly.

(Dictated to the stenographer, transcribed by her and signed by me and then pronounced in the Open Court on this 17th day of December, 2021)

(Dhanesh Mugali)
II Addl. Civil Judge & J.M.F.C.,
Kundapura (C/c)

ANNEXURES

The list of witness examined on behalf plaintiff:

PW-1 : Philip Fernandes
PW-2 : Peter Ferndandes

The list of documents exhibited on behalf of plaintiff:

Ex-P1 to 3 : RTC extracts
Ex-P4 : Will dated 07.10.1986
Ex-P4 (a) & (b): Signature of witness

The list of witness examined on behalf of defendant:- Nil

The list of document exhibited on behalf of defendant:- Nil

II Addl.Civil Judge & J.M.F.C.,
Kundapura (C/c)

kdp/-