

Government of Karnataka

**Form No.9
(Civil)
Title sheet for
Judgment
in suits
(R.P.91)**

**IN THE COURT OF THE CIVIL JUDGE & JMFC,
HARAPANAHALLI.**

Present: SMT. B.G.SHOBHA, M.A., LL.B.,
Civil Judge & JMFC, Harapanahalli.

Dated 8th day of August 2018

O.S. NO. 61/2017

Plaintiff/s : Smt. Shanthamma
W/o R.Yallappa
D/o M.Halasiddappa
Aged about 30 years,
Hindu, Agriculturist,
R/at 9th ward Dodda Gardikere,
Harapanahalli town,
Davangere District.

(Rep. by Sri. P.J.G, Advocate)

-Vs-

Defendant/s : 1. Smt. M. Halamma,
W/o Late M.Halasiddappa,
Aged about 58 years,

2. M.Jayappa
S/o Late M.Halasiddappa
Aged about 35 years,

3. M.Jagadeesha,
S/o Late M.Halasiddappa
Aged about 30 years,

4. M. Hanumanthappa,
S/o Late M.Halasiddappa
Aged about 21 years,
5. Jyothemma
W/o Uchangeppa
Aged about 28 years,
6. Halamma
W/o Nethaji
Aged about 20 years,

Defendant No.1 to 4 are Hindu,
Agriculturists, R/at 9th ward,
Dodda Gardikere,
Harapanahalli town,
Davanagere District.

Defendant No. 5 and 6 are Hindu,
Agriculturists, R/at 8th ward,
Dodda Gardikere,
Harapanahalli town,
Davanagere District.

7. R. Basappa,
S/o Durugappa,
Aged about 64 years,
Hindu, Agriculturist,
R/at 8th ward,
Valmeeki nagar,
Harapanahalli town.

(Exparte)

Date of institution of the suit	30-03-2017
Nature of suit	Partition and separate possession
Date of commencement of Trial	28-06-2018
Date on which the judgment was pronounced	08-08-2018

Duration of suit	Year/s	Months	Days
	01	04	08

(B.G.SHOBHA)
Civil Judge & JMFC.,
Harapanahalli.

J U D G M E N T

This is a suit for partition and separate possession with respect to following properties.

Item No.1. Sy.No.361/A measuring 2 acre 56 cents bounded as under;

East by: Rickyard of D.Bheemappa and others,

West by: Remaining land in same survey number

belongs to Manjunatha and Hanmanthappa,

North by: Land of Jayappa and his brothers,

South by: Land of M.Doddakappa.

Item No.2. Sy.No.361/1 measuring 25 cents bounded as under;

East by: Land of R.Gonemma,

West by: Road,

North by: Land of M.Gangappa,

South by: Land of R.Basappa.

Both properties are situated at Harapanahalli town.

(hereinafter called as suit schedule properties)

2. The brief facts of the case are as follows:

The plaintiff stated that herself and defendant Nos.2 to 6 are children of late Halasiddappa and defendant No.1 is wife of said Halasiddappa. He was died on 28-06-2007. The defendant No.7 is not concerned to the family of plaintiff and defendant Nos.1 to 6. The suit schedule properties are Hindu undivided joint family and ancestral properties of plaintiff and defendant Nos.1 to 6. They have jointly succeeded said properties as legal heirs of deceased M.Halasiddappa. After his death katha was mutated in the name of defendant No.1. Since then they are in joint possession and enjoyment of said properties. The plaintiff has requested the defendants on 10-03-2017 to effect partition by meets and bounds. But the defendants No.1 to 6 have declined the same. They are colluding with defendant No.7 created registered sale deed with respect to item No.2 of suit schedule property on 17-03-2017 with an intention to knock of legitimate share of plaintiff. Hence said sale deed is not binding on the plaintiff. Hence this suit.

3. Though the summons was served on defendant Nos.1 to 7 they remained absent. Hence they were placed *exparte*.

4. On the basis of above pleadings, the following points have been arised for my consideration:-

1. **Whether the plaintiff proves that herself and defendant Nos.1 to 6 are joint family members and suit schedule properties are Hindu undivided joint family and ancestral properties?**
2. **Whether the plaintiff is entitled for partition. If so to what extent ?**
3. **What order or decree?**

5. In order to prove the case of the plaintiff, the plaintiff has examined herself as P.W.1 and got marked 3 documents at Ex.P.1 to Ex.P.3. On the other hand defendant Nos.1 to 7 were placed exparte.

6. Heard arguments on both sides.

7. My answer on the above points is as follows:-

- | | |
|-------------------|--|
| Point No.1 | : In the Negative |
| Point No.2 | : In the Negative |
| Point No.3 | : As per the final order,
for the following:- |

REASONS

8. **POINT NOS.1 AND 2:-** These points are taken up together for discussion as they require same set of pleadings and documents.

It is a specific case of the plaintiff that herself and defendant Nos.1 to 6 are joint family members. The suit schedule properties are their Hindu undivided joint family and ancestral properties. In order to prove the relationship between herself and defendant Nos.1 to 6 she has not produced any supported documents. However since the defendants remained absent the allegation of the plaintiff is remained unchallenged. As such there is no reason to disbelieve the relationship. The suit schedule property is concerned the plaintiff has produced revenue documents. In order to prove the case of the plaintiff she has been examined herself as P.W.1 and filed affidavit in lieu of her examination in chief in which she has reiterated averments of plaint. In support of her case she has produced Ex.P.1 to 3. Ex.P.1 is RTC for the year 2016-17 pertaining to Item No.1 of suit schedule property which reveals that 2 acre 56 cents of land in Sy.No.361/A is standing in the name of one Manjunatha Hanumanthappa minor guardian Kenchappa and another 2 acre 56 cents in same survey number is standing in the name of Myaki Halamma i.e., defendant No.1. Ex.P.2 is pertaining to item No.2 of the suit schedule property which reveals that 0.25 cents of land in Sy.No.361/1 is standing in the name of

Halamma W/o Late M.Halasiddappa by virtue of partition dated 15-09-2014. Ex.P.3 reveals that on 17-03-2017 one Halamma W/o Late M.Halasiddappa has executed registered sale deed in favour of Rayadurgada Basappa S/o Durugappa i.e., defendant No.7 with respect to the property bearing Sy.No.361/1 measuring 25 cents i.e., item No.2 of suit schedule property. Apart from Ex.P.1 to 3 the plaintiff has not produced any document to show that suit schedule properties are her joint family and ancestral properties.

9. During the course of arguments the counsel for plaintiff argued that “ the father of plaintiff and his brother have divided their family properties. In said partition suit schedule properties were fallen to the share of father of plaintiff ”. However in order to prove that the suit schedule properties are fallen to the share of father of plaintiff and defendant Nos. 2 to 6 she has not produced partition deed. Moreover the plaintiff has not produced document to show that suit schedule properties are belongs to her father. After partition katha of said properties was standing in his name. It is true that in Ex.P.1 the name of defendant No.1 could be seen. But in Column No.10 of Ex.P.1 the mode of acquisition

of property was not mentioned. Whether katha of item No.1 of the suit schedule property was mutated in the name of defendant No.1 through pavathi varasu or not is to be considered. Ex.P.1 nothing has been mentioned regarding said aspects. As such it creates doubt regarding ancestral property of plaintiff.

10. Item No.2 of the suit schedule property is concerned as per Ex.P.2, the land measuring 25 cents in Sy.No.361/1 is standing in the name of Halamma W/o Late M.Halasiddappa i.e., defendant No.1. But in Column No.10 the mode of acquisition of property is mentioned as partition dated 15-09-2014. According to the plaintiff said property is belongs to her father. If at all the said property is belonging to her father the mode of acquisition of property would have been mentioned as inheritance or pavathi varasu. As such it creates doubt regarding case of the plaintiff. Ex.P.3 makes clear that defendant No.1 has executed registered sale deed in favour of defendant No.7. The recital of Ex.P.3 discloses that the possession of said property has been delivered to defendant No.7. Though the plaintiff has stated that behind her back the defendant No.1 has sold said property. But in

order to prove the same the plaintiff has not placed any material. If at all the defendant No.1 has sold said property without the knowledge of the plaintiff she would have adduced cogent or convincing witness evidence. It is true that the defendant No.7 was not appeared before the court. But mere absence of the defendant is not amounts that the plaintiff has discharged her burden of proof.

11. It is principle of law that the burden is always lies on the party who asserts the existence of the facts. As such when the plaintiff stated that suit schedule properties are her Hindu undivided joint family and ancestral properties the burden is lies on her to prove the same on her own strength. When she has failed to prove that without her knowledge defendant No.1 has sold item No.1 of the suit schedule property the presumption could be drawn it could be informed that said sale transaction is within her knowledge. Therefore the said sale deed is binding on her. Item No.1 of the suit schedule property is concerned the plaintiff has not produced any other documents apart from Ex.P.1 to prove that said property is their ancestral and joint family property. When she has stated that suit schedule properties are ancestral properties she ought to include all the joint family

members. She has to produced genealogical tree of her family. But the plaintiff has not produced genealogical tree of her family and she has also not made all the joint family members as parties. Moreover during the course of arguments the counsel for plaintiff submitted that the father of plaintiff was having brother. Under such circumstances the plaintiff would have made him as party to the suit as she is claiming share in suit schedule property stating that suit schedule properties are her ancestral and Hindu undivided joint family properties. In view of above discussion this court is of the opinion that the plaintiff has failed to prove that suit schedule properties are Hindu undivided joint family and ancestral properties of herself and defendant Nos.1 to 6 and they are in joint possession of said properties. Therefore the plaintiff is not entitled for partition. Accordingly point Nos.1 and 2 are answered in the *negative*.

12. POINT NO.3:- In view of above findings, I proceed to pass the following;

ORDER

The suit of the plaintiff for the relief of partition and separate possession is hereby dismissed.

Considering the relationship between parties no order as to costs.

Draw decree accordingly.

(Dictated to the stenographer, transcribed, computerized by her, revised, corrected and then pronounced by me in the open Court on 8th day of August, 2018)

(B.G.SHOBHA)
Civil Judge & JMFC.,
Harapanahalli.

ANNEXURES

List of witnesses examined for the plaintiff/s :-

P.W.1 : Smt. Shanthamma

List of documents marked for the plaintiff/s :-

Exs.P.1 and 2 : RTC extracts
Ex.P.3 : C/c of registered sale deed
dated 17-03-2017.

List of witnesses examined for the Defendant/s :-

N I L

List of documents marked for the Defendant/s :-

N I L

**Civil Judge & JMFC.,
Harapanahalli.**

(Judgment pronounced in the open court
vide separate)

ORDER

**The suit of the plaintiff for
the relief of partition and
separate possession is hereby
dismissed.**

**Considering the relationship
between parties no order as to
costs.**

Draw decree accordingly.

(B.G.SHOBHA)
Civil Judge & JMFC.,
Harapanahalli.

