

IN THE COURT OF CIVIL JUDGE AT
HARAPANAHALLI

Present: SRI. PRAKASH ARJUN BANASODE B.A.,
LLB.,(Spl)
Civil Judge and J.M.F.C.,
HARAPANAHALLI.

Dated: 09th Day of OCTOBER - 2015

ORIGINAL SUIT No. 154 / 2004

Plaintiff :- Smt. Jyothi Neelamma,
W/o Eshwarappa,
Aged about 62 years,
Hindu, Agriculture,
R/o Neelagunda Village/Post,
Harapanahalli Taluk,
Davanagere District.
(By Sri. M.A.N. Advocate)

// V/s //

- Defendants :-**
1. Sri. Jyothi Basavarajappa,
S/o Huchappa, Aged 55 years,
Hindu, Agriculturist,
R/o Kanchi Bangle Mane,
Narasimha Road,
Old Town, Bhadravathi Post and Taluk,
Shimoga Dist.
 2. Land Acquisition Officer, Kotturu –
Harihara Railway, Broad Gauge Line
Construction, Harapanahalli Town,
Davanagee District.
 3. Jyothi Gowramma W/o late Nanjappa,
Age: 69 yers, Housewife, R/o Kanchi
Bangle Mane, Narasimha Road, Old

Town, Bhadravathi Post and Taluk,
Shimoga Dist.

4. Jyothi Siddlingamma W/o late Virupakshappa,(D/o late Huchappa), Housewife, Age: 58 year, R/o Morageri Village, Hagaribommanahalli Taluk.
5. Alavandi Veeranna S/o Shanthaveerapa, Age: 62 years, Agriculturist, R/o Neelagunda Village, Harapanahalli Taluk, Davanagere Dist.

(By Sri. B.R.G. Advocate)

Date of Institution of the suit	:	30-11-2004		
Nature of the suit	:	Partition, Separate Possession & Permanent Injunction		
Date of the commencement of recording of the evidence	:	30-10-2013		
Date on which the Judgment was pronounced	:	09-10-2015		
Total Duration :		<u>Year/s</u>	<u>Month/s</u>	<u>Day/s</u>
		10	10	09

Civil Judge, Harapanahalli.

-:: J U D G M E N T ::-

1. This is a suit instituted by the plaintiff against the defendants for Partition and separate possession in respect of suit schedule properties situated at Machihalli village in Harapanahalli Taluk.

The case of plaintiff in brief are as under:-

2. That, the husband of plaintiff by name late Eshwarappa, the defendant No.1 and one late Nanjappa are own brothers being the sons of late Huchappa. They constituted the joint family. The suit properties are joint family properties. They were living in the joint family. The late Eshwarappa husband of plaintiff died issueless about 44 years ago at Neelagunda village while he was in the joint family. The said Nanjappa died issueless about one month back at Bhadravati while he was in joint family. The plaintiff and defendant No.1 are the only persons to step in to the shoes of joint family of late Huchappa. The defendant No.1 Kartha of the joint family. The plaint schedule properties are the joint family properties of plaintiff and defendant No.1. The item No.1 of the plaint schedule property stands in the name of late Nanjappa. The plaintiff and defendant No.1 are living together in the joint family till today. The defendant No.1 is managing the family properties as kartha of the family. Now the defendant No.1 is making efforts to keep the wealth of the joint family in secret with an intention to knock off the share of plaintiff. The women folk of the family opposed her unequivocal intention to separate from the joint family for getting her share which proved futile. The plaintiff is entitled $\frac{1}{2}$ share in the suit schedule properties.

3. The suit schedule properties item No.3 to 7 are joint family properties and same are acquired by the ancestors of plaintiff's husband. Hence, plaintiff is also having legitimate share in the suit schedule properties.

4. The defendant No.1 and the husband of defendant No.3 are not the absolute owners of the said lands. But they have created some fictitious documents behind the back of this plaintiff with a mala-fide intention to deprive the rights of plaintiff in the said properties. The above said lands stands in the name of some other third persons and they are in possession of joint family.

5. The item No.7 property is stands in the name of late veerabhadrappa on the strength of alleged WILL said to have been executed by late Nanjappa who is the husband of defendant No.3. But, the said Nanjappa was not the absolute owner and is not his self acquired property.

6. The item No.3 of the suit property is stands in the name of one R. Parashuramapp, the item No.4 of suit property stands in the name of Gangappa, th item No.5 suit property is stands in the name of Sureshappa and item No.6 of suit property stands in the name of Talawra Choudappa and item No.7 stands in the name of one Veerashaivappa although they are not the owners and possessors of the suit lands. These documents are illegal and against the law. The alleged

documents are if any in respect of above said properties are not binding to this plaintiff.

7. The defendant No.2 submitted representation before the Tahasildar, Harapanahalli to enter his name in all revenue records in respect of suit schedule property for which the plaintiff filed objections. The said petition numbered as ROR dispute No.27/2004-05 and same is pending for enquiry.

8. The defendant No.2 is Land Acquisition Officer for Kotturu – Harihara Board Gauge Railway Line Construction. The defendant No.2 has acquired the land to an extent of 3.00 acres in item No.1 of the suit property to form a railway line. The defendant No.1 alone is making effort to claim compensation. But, the plaintiff has issued legal notice to defendant No.1 and 2 through her advocate to stop the payment of compensation. Hence, the defendant No.2 is made as formal party. The defendant No.1 is highly influential person, if he gets success in getting compensation from defendant No.2 then the plaintiff will be put irreparable loss and may leads to multiplicity of proceedings in respect of suit properties. Therefore the plaintiff has constrained to institute the suit against the defendants and prayed to decree the suit.

9. In pursuance of the suit summons the defendants No.1 to 5 have appeared before the court and their counsel had filed their written statement. The defendant No.3 and 4 adopted the written statement of defendant No.1. The contents of written statement of defendant No.1 are as under:-

The defendant No.1 denied the allegations of plaintiff except wherein expressly admitted by this defendant No.1. The suit of the plaintiff not maintainable under the law. The plaintiff para No.2 and 3 are false. It is true that suit schedule properties are joint family properties. But the plaintiff has not shown correct genealogy. The plaintiff para No.4 to 7 are false. The work of Railway Line began prior to institution of suit. The defendant No.5 has got no right in the suit properties and he has not in possession. The plaintiff has not made necessary parties to the suit. The plaintiff had obtained exparte decree and got allotted ½ share in the suit properties and got executed sale deed in favour of 5th defendant Alavandi Veeranna. The said sale deed is created one. The correct genealogical tree is as under:-

Jyothi Huchappa(Died)		
/		
(W) Channabasamma(died)		
/-----/-----/		
Nanjappa(died)	Eshwarappa (died)	Huchhappa(died)
/ /		
Gouramma(D.3)	Neelamma(Plft)	

/-----/
 Basavarajappa(D.1) Siddalingamma(D.4)

10. The plaintiff and defendant No.1, 3 and 4 are entitled 1/4th share in the suit schedule properties. The plaintiff and defendant No.1, 3 and 4 are also entitled 1/4th share in the compensation amount from defendant No.2.

11. The defendant No.5 also filed separate written statement. The contents of written statement of defendant No.5 are under:-

The plaintiff had sold to an extent of 7.72 acres from the suit schedule land for Rs.1,70,000/-. The defendant No.5 is the bona-fide purchase for valuable consideration. The defendant No.5 verified the revenue records and encumbrance of suit land for the past 13 years and purchased the above said land. Since the date of purchase, the defendant No.5 has been in possessor and enjoyment of said land which is bounded as follows:-

East: Railway Track, West: Land of Bhovi Sddappa, North: Remaining land in same survey number, South: Land of Bhovi Sidda. There is no cause of action for the suit and counter claim. The suit of the plaintiff and defendants No.1 to 4. Counter claim is not maintainable and same are liable to be dismissed.

12. The defendant No.1 filed counter claim U/o 8 Rule 6 of CPC are as under:-

The counter claim schedule properties are the ancestral joint family properties of plaintiff and defendant No.1, 3 and 4 and thereof and they are entitled 1/4th share in the said properties. They are also entitled 1/4th share in the compensation amount from Railway Acquisition Officer i.e., Defendant No.2. The defendant No.5 with the help of revenue officer got mutated his name illegally in respect of suit properties on the basis of created sale deed. The defendant No.5 is the third person and he has no right in the suit properties. The plaintiff got exparte decree in respect of suit Sy.No.160/B total measuring 17.44 and got allotted ½ share behind the back of defendants the plaintiff and defendant No.5 got created sale deed. The said sale deed is to be cancelled and it is not binding on the rights of the defendants. The defendants claims mesne profits from the plaintiff and defendant No.5 of Rs.1,20,000/- since the date of getting land from the plaintiffs and defendant No.5.

13. The defendant No.2 also filed separate written statement. The contents of written statement of defendant No.2 are under:-

The suit of the plaintiff is not maintainable in the eye of law. The plaint para No.2 to 8 are false, frivolous and denied

by this defendant. The suit property described in the plaint is not correct. The plaintiff has not made necessary parties i.e., joint owners to the suit properties. Therefore the suit is bad for non-joinder of necessary parties. The plaintiff has not produced notices pertaining to the land acquisition proceedings. The plaintiff has not claimed any relief against Central Government. Because the Central Government i.e., Union of India is necessary party and the plaintiff has not made as party to the suit. The notices U/s 79 and 80 of CPC was not served on the General Manager, Railways Central Government. Therefore, the plaint is to be rejected U/ 7 rule 11 of CPC.

14. On the basis of the pleadings of the parties the following issues are framed:-

-:: I S S U E S ::-

- 1) Whether the plaintiff proves the family relationship of plaintiff & defendant No.1, 3 and 4?
- 2) Whether the plaintiff proves that she is entitle for ½ share in the suit schedule properties?
- 3) Whether the defendant No.1 proves that plaintiff and defendant No.5 have created sale deed in respect of suit property?
- 4) Whether the defendant No.5 entitled the relief as claimed in the counter claim?
- 5) Whether the defendant No.5 proves that he is the bona-fide purchaser of 7.72 acres from the plaintiff No.1?

- 6) Whether the plaintiff entitled for relief as claimed in the plaintiff?
- 7) What order or decree?

ADDITIONAL ISSUES:-

- 1) Whether the defendant No.1 proves that the suit is bad for non-joinder of necessary parties?
- 2) Whether the defendant No.1 further proves that the plaintiff has no shown the correct genealogy of plaintiff's family?
- 3) Whether the defendant No.1 proves that himself, defendant No.3 and defendant No.4 are entitled for mesne profits as claimed in the written statement from plaintiff and defendant No.5?
- 4) What order or decree?

15. Having heard learned counsel for plaintiff and defendants.

16. To substantiate the case of the plaintiff himself examined as Pw.1 and also got examined two witnesses as P.W.2 and 3 and got marked 18 documents at Ex.P.1 to P.18.

17. On the other hand, to disprove the case of the plaintiffs, the defendant No.1 himself examined D.W.1, and also got examined 6 witnesses as D.W.2 to 7 and got marked 36 documents at Ex.D.1 to D.36.

18. My findings on the above points are as under:-

- Issue No.1 :- In the Affirmative,
 Issue No.2 :- In the partly Affirmative,
 Issue No.3 :- In the Negative,
 Issue No.4 :- In the Negative,
 Issue No.5 :- In the Negative,
 Issue No.6 :- In the partly Affirmative
 Issue No.7 :-As per the final order, for the following,

Additional Issues:-

- Additional issue No.1 : In the Negative,
 Additional Issue No.2 : In the Affirmative,
 Additional Issue No.3 : In the Negative,
 Additional Issue No.4 : Rs.42,372/- is to be divided among the plaintiff and defendant No.1, 3 and 4 equally.

-:: R E A S O N S ::-

Issue No1:-

19. It is case of the plaintiff that herself and defendant No1, 3 and 4 are the members of Hindu joint family. The defendants admitted the relationship of plaintiff. No dispute in respect of relationship between the parties. Hence it is clear that the plaintiff and defendant No1, 3 and 4 are the Hindu joint family members. Hence I answer **issue No.1 in the AFFIRMATIVE.**

Issue No.2 to 6 :-

20. It is burden casted upon the defendant No.1 to prove that plaintiff and defendant No.5 have created sale deed in

respect of suit property. And the defendant No 5 is the bona-fide purchaser of the suit schedule land bearing Sy. No 165/B measuring to an extent of 7.72 acres of Machihalli Village in Harapanahalli Taluka.

21. It is the case of the defendant No.1 that on strength of exparte decree passed in O.S.No.154/2004, the plaintiff sold 7.72 acres of land from the suit land bearing Sy.No.160/B situated at Machihalli village in favour of defendant No.5 through a registered sale deed. i.e. Ex.D.1. But the said exparte decree has been challenged by the defendants before the Hon'ble Senior Civil Judge Harapanahalli Court in R.A.No.67/09. The said exparte decree was set side by the Hon'ble Senior Civil Judge, Harapanahalli and remanded the matter back for fresh disposal. In view of the Judgement & Decree passed in R.A.No.67/2009 the plaintiff has got no right i.e., $\frac{1}{2}$ share in the suit property. Therefore, sale deed dated: 06-06-2007 i.e., Ex.D.1 executed by plaintiff in favour of Defendant No 5 has got no value in the eye of law. Moreover, the plaintiff alone sold the suit property bearing Sy.No.160/B measuring 7.72 acres in favour of defendant No.5 through the sale Deed i-e Ex.D.1. Admittedly there was no partition effected between the husband of plaintiff and his brothers in their family properties. No evidence is placed by the plaintiff before the Court to show that the property sold in

favour of defendant No 5 was fallen to the share of husband of plaintiff. But the said property should be divided among the plaintiff, defendant No.1, 3 and 4. They are the members of Hindu Joint family. They have got right in the said property. It is not the case of the plaintiff that she sold suit property to an extent of 7.72 acres in favour of defendant No.5 for the family legal necessity. No pleading is forthcoming in this regard in the plaint. Under the circumstances, I am of the opinion that the sale deed dated: 06-06-2007 Ex.D.1 has got no value in the eye of law and the said sale deed is not binding on the rights of the Defendant No.1, 3 and 4. Therefore, it is clear that plaintiff without having right, title and interest sold the above said property in favour of defendant No 5. Therefore the plaintiff and defendant No 5 created sale deed Ex.D.1 in respect of suit property. Therefore, Defendant No.5 is not the bona-fide purchaser of the suit property bearing Sy. No.160/B to an extent of 7.72 acres of Machihalli Village in Harapanahalli Taluk. Defendant No.5 purchased the said property to an extent of 7.72 of extent from the plaintiff alone but Defendant No.5 has to obtain consent of all the family members of the plaintiff. But he has not done so. Therefore the Defendant No.5 is not the bona-fide purchaser. The plaintiff alone did not have right to sell the suit land to an extent of 7.72 acres in favour of Defendant No.5. Because it is joint family properties of

plaintiff and defendants No.1, 3 and 4. The rights of others family members i.e., Defendant No.1, 3 and 4 are involved in the suit schedule properties. The Defendant No.5 is who is the buyer, he must be aware before purchasing the property. Admittedly, the husband of plaintiff Eshwarappa, defendant No.1 Basavarajappa husband of defendant No.3 Nanjappa. Defendant No.4 Siddalingappa who are the sons and daughters of late Huchchapa. They are the coparceners and Hindu Joint family members. The D.W.1 admitted in his cross-examination that the suit schedule properties are the ancestral joint family properties of plaintiff, defendant No.1, 3 and 4. No partition is effected between them in respect of suit properties. Ex.P.18 registered partition Deed is effected in between late Nanjappa and his sons in respect of suit properties. Ex.P.18 partition deed had not been effected in between plaintiff's husband, Defendant No.1 and defendant No.4. The above said persons are not parties to the Ex.P.18 registered partition deed. Therefore, the registered partition deed is not binding on the rights of plaintiff, Defendant No.1 and Defendant No.4. Therefore, the D.18 registered partition deed does creates rights only infavour of defendant No.3 and his sons.

22. In the instant suit, the registered sale deed i-e Ex-D1 executed by plaintiff in favour of Defendant No 5 in respect of suit schedule property to an extent of 7.72 acres and

property sold by defendants are not binding on the rights of plaintiff and Defendant No 1,3 and 4. Both plaintiffs and defendants sold some of partition of suit properties as per their convenient. No partition is effected between them in respect of suit properties. Admittedly, the suit survey No.160/B total measuring 26.44 acres and schedule 2 properties are ancestral properties of plaintiff and Defendant No.1, 3 and 4. Whatever alienation made in respect of suit properties are not binding on both plaintiff and defendants.

23. Admittedly 3.00 acres of land has been acquired by the defendant No.2 Railway Department Authorities from the suit survey No.160/B of Machihalli Village. This land of 3.00 acres has to be excluded from the suit properties bearing Sy.No.160/B. Moreover, the property under registered Sale deed i-e Ex.D.1 is to be excluded. The Veerabhadrappa S/o Nanjappa has got decree in respect of suit schedule Sy.No.160/B measuring 05 acres of Machihalli Village. The said decree passed in O.S.No.140/05. The said Veerabhadrappa has become the owner and possessor of the 05 acres of land from the suit land bearing Sy.No.160/B by virtue of WILL. The said decree has not been challenged by the plaintiff and other defendants. The said 05 acres of land and 03 acres acquired by the second defendant has to be excluded from the suit property. Admittedly the second

defendant deposited the compensation of Rs.42,372/-. Except these properties, the other suit properties are available for partition including the said compensation amount. The counsel for plaintiff argued that the property sold by defendants in respect of suit properties are also not binding on the rights of the plaintiff. But the plaintiff has not averred in the plaint that which defendants sold which property to whom. Therefore the plea raised by the counsel for the plaintiff is not sustainable. The plaintiff, defendant no.1, 3 and 4 are entitled 1/4th share in the suit schedule properties except land acquired by second defendant and property to an extent of 5 acres from suit survey No 160/B of Machihalli Village. under decree passed in O.S No 140/05. Hence, I answer **issue No.2 in the PARTLY AFFIRMATIVE, issue No.3 to 5 are in the NEGATIVE, issue No.6 in the PARTLY AFFIRMATIVE.**

Additional Issue No.1: -

24. The defendant No.1 contends that the suit is bad for non-joinder of necessary parties. But, the plea raised by the 1st defendant is not sustainable because during the pendency of the suit plaintiff got amended the plaint and made all necessary parties to the suit. Therefore, **I am of the view that the suit is not bad for non-joinder of necessary parties, additional issue No.1 in the NEGATIVE.**

Additional Issue No.2 :-

25. The defendant No.1 further contends that the plaintiff has not shown the correct genealogical tree of the plaintiffs family. It is true that in the plaint the plaintiff has not shown the correct genealogical tree of the plaintiff's family. Because the defendant No.1 has given the clear genealogical tree of the plaintiff's family. The genealogical tree placed by the defendant No.1 before the court is admitted by the plaintiff. Therefore, the genealogical tree submitted by the defendant No.1 is correct one. On the other hand, the genealogical tree shown by the plaintiff in the schedule is wrong and incomplete. Therefore, **I answer additional issue No.2 in the AFFIRMATIVE.**

Additional Issue No.3:-

26. The defendant No.1 further contends that himself, defendant No.3 and defendant No.4 are entitled mesne profits from the plaintiff and defendant No.5. To claim the mesne profits, the defendants have to establish the actual profits gained by the plaintiff and defendant No.5 from the suit schedule property. In order to prove the mesne profits separate enquiry has to be conducted. Mere claiming mesne profits from the plaintiff and defendant No.5 is not sufficient. The defendant No.1 has not placed any document to show that the plaintiff and defendant No.5 have got profit of Rs

1.20.000 from the suit property. Therefore the defendant No.1, 3 and 4 are not entitled Rs.1,20,000/- mesne profits. Hence, I answer **additional issue No.3 in the NEGATIVE.**

Additional issue No.4:-

27. In view of the findings on the above issues, I am of the opinion that the plaintiff has proved that she is the members of Hindu Joint Family and suit schedule properties are their ancestral joint family properties and therefore the plaintiff and defenant No.1, 3 and 4 are entitled $\frac{1}{4}$ share in the suit schedule properties, except land acquired by the 2nd defendant and property under decree passed in O.S.No.140/2005 on the file of Civil Judge Court, Harapanahalli. Counter claim of the defendant No.1 is hereby partly decreed. The amount deposited by the 2nd defendant before the court i.e., **Rs.42,372/- is to be divided among the plaintiff and defendant No.1, 3 and 4 equally.**

28. **Issue No.7 :-** In view of the above findings, I proceed to pass the following:

-:: O R D E R ::-

The Suit of the plaintiff is hereby partly decreed with costs.

It is declared that the plaintiff and defendants No.1, 3 and 4 are entitled $\frac{1}{4}$ th share in the suit schedule properties except

land acquired by the 2nd defendant and property under decree passed in O.S.No.140/2005 on the file of Civil Judge Court, Harapanahalli.

Counter claim of the defendant No.1 is hereby partly decreed. The amount deposited by the 2nd defendant before the court i.e., Rs.42,372/- is to be divided among the plaintiff and defendant No.1, 3 and 4 equally.

The counter claim in respect of claiming mesne profit from the plaintiff and defendant No.5 is hereby dismissed. The sale Deed i-e Ex-D1 is not binding on the rights of plaintiff and Defendant No1, 3 and 4.

Draw preliminary decree accordingly.

(Dictated to the Stenographer directly on the computer, corrected, signed and then pronounced by me in the open Court this the 09th day of October 2015)

**(PRAKASH ARJUN BANASODE)
Civil Judge, Harapanahalli.**

-:: ANNEXURE ::-**1. List of Witnesses examined for the plaintiff:-**

Pw.1 :- Anandappa

Pw.2 :- Basappa

Pw.3 :- Thimmappa

2. List of Witnesses examined for the defendant :-

Dw.1 :- Jyothi Basavarajappa

Dw.2 :- Veeranna

Dw.3 :- Nagaraj

Dw.4 :- Miyajan

Dw.5 :- M.R. Nagaraj

Dw.6 :- Jingade

Dw.7 :- K.B. Anandappa Naik

3. List of Documents exhibited for the plaintiff :-

Ex.P.1 :- GPA

Ex.P.2 :- Copy of notice

Ex.P.3 & 4 :- Postal receipts

Ex.P.5 to 7 :- ROR's

Ex.P.8 :- C/c of the Plaint in O.S.No.60/2007

Ex.P.9 to 11 :- C/c of the W.S. in O.S.No.60/2007

Ex.P.12 to 16:- ROR's

Ex.P.17 :- C/c of the Sale deed

Ex.P.18 :- Palupatti

Ex.P.18(a) :- Signature

4. List of Documents exhibited for the defendant :-

- Ex.D.1 :- C/c of Sale deed
Ex.D.2 to 5 :- RTC
Ex.D.6 :- C/c of order in FDP:03/75
Ex.D.7 :- RORs
Ex.D.8 :- Objection
Ex.D.9 :- C/c of Application
Ex.D.9(a) :- Copy of complaint
Ex.D.10 :- Receipt
Ex.D.11 :- Wound Certificate
Ex.D.12 to 15:- Courier Receipts
Ex.D.16 :- Notice from Tahasildar, Harapanahalli dtd:
29-11-08
Ex.D.17 :- Mutation register extract No.187/2005-06
Ex.D.18 :- Process Report in O.S.No.154/2004
Ex.D.19 :- Notice
Ex.D.20 :- Mutation register extract
Ex.D.21 :- Objections
Ex.D.22 :- C/c of objections
Ex.D.23 :- C/c of Service Register extract
Ex.D.24to25 :- Mutation Register extract
Ex.D.26to36 :- RORs

(PRAKASH ARJUN BANASODE)
Civil Judge, Harapanahalli.

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