

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 16th Day of April-2014

ORIGINAL SUIT No.158/2013

- Plaintiff:-***
1. Sri G. Prakash
S/o Late Kallappa,
Aged about 45 years,
Hindu, Occ: Cooking,
R/o Harapanahalli Town,
Davanagere District
and residing at Gangavathi Town.
 2. Sri G.Manjunatha
S/o Late Kallappa
aged about 42 years,
Hindu, Auto Driver,
resident of
C/o Basavarajappa house,
Shamanur village,
Davanagere taluk and District.

(By Sri. P.J.G Advocate)

// V/s //

Defendants :-

1. G.Rudrappa
W/o Late Kallappa,
Aged about 53 years,
Gouli Street,
resident of Harapanahalli Town,
Davanagere District.
2. Smt. Mangamma,
W/o Gowali Nagaraja,
Aged about 50 years,
R/o Gadibevinamara,
Davanagere Town and district.

3. Smt. Bhagyamma
W/o Jambanna,
Aged about 45 years,
R/o Mariyammanahalli,
Hospet Taluk, Bellary District.
4. Sri Rajappa
S/o Late Kallappa,
Aged about 40 years,
R/o Goulara oni,
near Municipality,
Harapanahalli town,
Davanagere district.
5. Smt. Eramma
W/o Manjunath,
Aged about 38 years,
R/o Purli, Manjunatha layout,
Shimoga taluk & district.

(D-1 to 5-Exparte)

Date of Institution of the suit : 20-06-2013

Nature of the suit : Partition & Separate Possession.

Date of the commencement of recording of the evidence : 12-03-2014

Date on which the Judgment was pronounced : 16-04-2014

Total Duration :	<u>Year/s</u> 00	<u>Month/s</u> 09	<u>Day/s</u> 25
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**Civil Judge & JMFC.,
Harapanahalli.**

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

1. This is a suit instituted by the plaintiffs against the defendants for Partition and separate possession claiming 1/7th share in the suit schedule properties by meets and bounds in the interest of justice and equity.

2. ***The case of plaintiffs in brief are as under:-***

That, the plaintiffs and defendants are sons and daughters of late Goulara Kallappa who died on 28.08.2004. The mother of the plaintiffs and defendants by name G.Savitramma died on 14.12.2010. The plaintiffs elder brother by name G.Nagappa and his wife Neelamma died issue less. The plaintiffs and defendants are the only the legal heirs of deceased Kallappa. The genealogical tree of the plaintiffs and defendants is furnished. The suit schedule properties are ancestral and joint family properties of plaintiffs and defendants and they are in joint possession and enjoyment of the suit properties even this day. The item No.3 suit schedule RCC house leased to one Yuvarajappa for running cloth shop. After death of mother of the plaintiffs and defendants, the plaintiffs have demanded their share the suit schedule properties but the defendants postponed by saying that they will give share by one or other reasons. The plaintiffs finally got issued lawyer notice on 06.04.2013 calling upon the defendants to make partition and separate possession of their 1/7th share each.

Except defendant No.1 and 5 all the defendants have acknowledged the receipt of said lawyer notice but the defendants have not come forward to make division of the suit properties and allot their legitimate share. Therefore the plaintiffs have constrained to institute the suit against the defendants and prayed to decree the suit.

3. After service of summons to the defendants, the defendant no.1 to 5 appeared before the court but they did not file Written Statement within prescribed time. Hence, Written Statement of defendants No.1 to 5 is taken as not filed.

4. On the basis of the pleadings, the points that arise for my consideration are as under.

-:: P O I N T S ::-

- 1) Whether the plaintiffs prove that they and defendants no.1 to 5 are the members of Hindu Joint family and suit schedule properties are their ancestral joint family properties and available for partition?
 - 2) Whether the plaintiffs are entitled 1/7th share each in the suit schedule properties as sought for?
 - 3) What order or decree?
5. Having heard learned counsel for plaintiff.
6. To substantiate the case of the plaintiff, plaintiff No.1 himself examined as Pw.1 and also got examined 2 other

witnesses as Pw-2 and 3 and got produced 11 documents at Ex.P.1 to 11.

7. 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,

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

8. **Points No.1 and 2:-**

These points are interconnected to each other. To avoid the repetition of facts and for the sake of convenience, I have taken up these points together for common discussion.

9. It is the case of the plaintiffs that they and defendant no.1 to 5 are the members of Hindu Joint family and suit schedule properties are their ancestral joint family properties. The plaintiffs and defendants are governed by Hindu Mitakshara School of Law. There was no any family partition effected between plaintiffs and defendant no.1 to 5 in respect of suit properties. Therefore, the plaintiffs are entitled to get 1/7th share each in the suit properties. The plaintiffs asked the defendants no.1 to 5 to make partition in the suit schedule properties but they not come forward for effecting partition. Hence, the plaintiffs have constrained to institute this suit against the defendants.

10. To substantiate the case of the plaintiff, the plaintiff No.1 in his evidence reiterated the plaint averments and

Pw.2 and 3 they have also reiterated the evidence of Pw.1 and got produced 11 documents at Ex.P.1 to P.11.

11. I have gone through the oral as well as documentary evidence produced by the plaintiffs. It is clear that the plaintiffs and defendants are the members of Hindu Joint Family and they governed by Hindu School of Mitakshara Law. The suit schedule properties are their ancestral and joint family properties. There was no partition effected in between plaintiffs and defendants in respect of suit schedule properties. The Ex.P.1 and P.2 are the ROR's of the suit lands bearing Sy.No.205/A1 measuring 2.10 Acres and another Sy.No.204B measuring 0.90 cents. The same are standing in the name of Savitramma W/o Late Gouli Kallappa who was none other than the mother of the plaintiffs and defendants. Ex.P-12 is the Khata Extract of Item No.3 of the suit schedule property i.e., House property is standing in the name of Gouli Rajendra S/o Gouli Kallappa. Ex.P-3 to 11 are legal notice, acknowledgements, postal covers and postal receipts. The said notice has been got issued to the defendants by the plaintiffs for asking to make partition in the suit schedule properties. The oral and documentary evidence available on record clearly discloses that the plaintiffs and defendants are the members of Hindu Joint Family and suit schedule properties are their ancestral joint family properties. There was no partition effected in between plaintiffs and defendants in respect of

suit schedule properties. The plaintiffs and defendants are governed by Hindu School of Mitakshara Law. The evidence of Pw-1 to 3 and documentary evidence placed by the plaintiffs is remained unchallenged and uncontraverted. Therefore the plaintiffs have established their case. Hence I **answer points No.1 and 2 in the affirmative.**

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

-:: ORDER ::-

The Suit of the plaintiff is decreed with costs.

It is declared that the plaintiffs are entitled 1/7th share in the suit schedule properties.

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 16th day of April-2014)

(SRI PRAKASH ARJUN BANASODE)
Civil Judge & JMFC.,
Harapanahalli.

-:: ANNEXURE ::-

1. List of Witnesses examined for the plaintiff:-

- Pw.1 :- Prakash
- Pw.2 :- Gouli Nagaraj
- Pw.3 :- Gouli Eramma

2. **List of Witnesses examined for the defendant :-**

-Nil-

3. **List of Documents exhibited for the plaintiff :-**

Ex.P.1&2 :- ROR of the suit lands
Ex.P.3 :- Legal notice
Ex.P 4 to 6 :- Three Postal acknowledgments
Ex.P.7 to 10 :- Postal covers
Ex.P-11 :- Seven postal receipts

4. **List of Documents exhibited for the defendant :-**

-Nil-

**Civil Judge & JMFC
Harapanahalli**

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