

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. SHOBHA B.G., M.A., LL.B.,
Civil Judge & JMFC, Harapanahalli.**

Dated 23rd Day of April, 2021.

O.S. NO.269/2014

Plaintiff / s : Lingaraj S/o Late Jayanna
Aged about 43 years,
Occ: Agriculturist and kitchen
Contractor
R/o Teligi village,
Harapanahalli taluk,
Davanagere District.
Now resident of Near Goshale,
Avaragere village, Davanagere city.

(Rept., by Sri M.H.V., Advocate)

V/s

Defendant / s : 1) Basavarajappa
S/o Gidda Halappa
aged about 60 years,
Occ: agriculturist
2) Parameshwarappa
S/o Gidda Halappa
Aged about 55 years,
Occ: agriculturist
Defendant No.1 and 2
are R/o Teligi village,
Harapanahalli taluk,
Davanagere District.
3) Smt. Gangamma
W/o Malatheshappa

aged about 50 years
Occ: Household work,
R/o Bilichodu village
Jagaluru Taluk,
Davanagere district.

4) Smt. Rathnamma
W/o Palakshappa
aged about 55 years
Occ: House wife
R/o Behind Vaibahava store,
Hasabavi Circle,
Davanagere city.

5) Smt. Basamma
W/o Parameshwarappa
aged about 50 years
R/o Taligi village,
Harapanahalli Taluk,
Davanagere District.

6) Sm.t Sharadamma
W/o Eshappa
Aged about 52 years,
R/o Bannavalli village,
Harapanahalli Taluk,
Davanagere District.

**(Rept., by Sri P.B.C., Advocate for
defendant No.1, defendant No.2 to
6 placed exd-parte)**

Date of institution of the suit : 10-11-2014

Nature of suit : Partition

Date of commencement of Trial : 05-12-2015

Date on which the judgment
was pronounced : 23-04-2021

Duration of suit : Year/s Months Days
06 05 13

J U D G M E N T

This is a suit for partition by metes and bounds with respect to the following properties;

SCHEDULE

The land bearing Sy.No.338 measuring 07-25 acres situated at Taligi village, Harapanahalli taluk, Davanagere District which is bounded as under:-

East : Property of Virupakshaiah advocate,

West : Property of Muttige Shekarappa,

North : Property of Hadagali Halappa,

South: Property of Mylarappa.

(Herein after referred as suit schedule property)

2. The brief facts of the case are as under:-

The plaintiff and the defendant Nos.4 and 5 are the son and daughters of one Late Shantamma. Said Shanthamma is the eldest daughter of late Gidda Halappa. The defendant No.1 to 4 and 6 are the sons and daughters of late Gidda Halappa. The father of the defendants and the mother of the plaintiff i.e., Gidda Halappa died intestate leaving behind the defendants and the mother of the plaintiff as his legal heirs without partitioning the suit schedule property among the legal heirs. Said Shanthamma i.e., mother of the plaintiff and the defendant Nos.4 and 5 was died intestate leaving behind

the plaintiff and the defendant Nos.4 and 5 as her legal heirs. The ssp is the ancestral and joint family property of the family of the mother of the plaintiff. One Giddahalappa was the propositus of the family of the mother of the plaintiff and defendant No.5 and other defendants. He had two wives, namely Kempu Kotramma and Kare Kotramma. Said Kempu Kotramma was no more and her legal heirs are also no more. The only remaining family is the Kare Kotramma's family. The Kare Kotramma was also no more. The mother of the plaintiff and the defendants family are belonging to Kare Kotramma's family. Said Gidda Halappa had enjoyed the suit schedule property till his death and after his death the mother of the plaintiff and other defendants have been in peaceful possession and enjoyment of the suit schedule property. The defendant No.1 being the eldest member of the family has look after the family affairs being the Kartha of the family. Since the date of death of Gidda Halappa no partition was taken place between the mother and other defendants. The defendant No.1 has not given any share to the mother of the plaintiff over the suit schedule property. After the death of the mother, the plaintiff demanded the share of his mother i.e., Shanthamma, but the defendant No.1 and 2 have ignored the

prayer of the plaintiff. The defendants Nos.1 and 2 are acting in a manner i.e., prejudicial to the interest and rights of the mother of the plaintiff. Hence this suit.

3. Per contra the defendant No.1 has filed his written statement wherein he has admitted that the defendant Nos.1 to 4 and 6 are sons and daughters of late. Giddahalappa. Apart from that he denied entire allegations made by the plaintiff in the plaint. Further it is contended that there is no cause of action to file this suit, the alleged cause of action is false. The defendants have given share to the mother of plaintiff by way of money and jewels at the time of her marriage. After the death of mother of plaintiff there is no existence of joint family. The suit is bad for non-joinder of necessary parties. The suit is barred by law of limitation and court fee paid is insufficient. Hence prayed to dismiss the suit.

4. In spite of service of summons, the defendant Nos.2 to 6 remained absent. Hence they were placed ex-parte.

5. On the basis of above pleadings, the following issues have been framed by this Court.

1. Whether the plaintiff proves that himself and defendants are undivided joint family members?

2. whether the plaintiff proves that suit schedule

property is ancestral and undivided joint family property property of himself and the defendants and they are in joint possession of said property?

- 3. Whether the defendant No.1 proves that the suit is barred by law of limitation?**
- 4. Whether the defendant No.1 proves that the share of mother of plaintiff has been already given at the time of her marriage by way of money and jewels?**
- 5. Whether the plaintiff is entitled for partition? If so, to what extent?**
- 6. What order or decree ?**

6. In order to prove the case of the plaintiff, he has been examined himself as P.W.1 and examined one more witness as P.W.2 and got marked 10 documents at Exs.P.1 to 10. Though the defendant No.1 filed written statement, he has not adduced any evidence. The other defendants have not contested the case.

7. Heard arguments on both side.

8. My answer on the above issues is as follows:-

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

REASONS

9. ISSUE NO.1, 2 AND 4:- These issues are taken up together for discussion to avoid repetition as they are require same set of pleadings and documents.

In order to prove the case of the plaintiff, he has been examined himself 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 his case he has examined one more witness as P.W.2 and produced Ex.P.1 to 10. According to the plaintiff himself and defendants are joint family members. The plaintiff and defendant Nos.4 and 5 are children of Late Shanthamma. Said Shanthamma is elder daughter of Late Gidda Halappa. The defendant Nos.1 to 3 and 6 are sons and daughter of Late Gidda Halappa. Said Gidda Halappa was died intestate leaving behind the defendants and mother of plaintiff as his legal heirs. The mother of plaintiff and defendant No.4 and 5 by name Shanthamma, was died intestate leaving behind them as her legal heirs. Said Gidda Halappa had 2 wives namely Kempu Kotramma and Kare Kotramma. Said Kempu Kotramma and her legal heirs are no more. The family of Kare Kotramma only remained. On the other hand the defendant No.1 has denied the relationship

that the plaintiff, defendant Nos.4 and 5 are sons and daughter of Shanthamma. However in order to prove the relationship between plaintiff and defendants he has not produced any document. When there is dispute regarding joint family members, the plaintiff has to prove the same, but the plaintiff has not produced single piece of documents to prove that he is joint family member. If at all he is joint family member of family of defendants, he would have produced genealogical tree. However he admitted that he is son of Shanthamma who is daughter of Giddahalappa and sister of defendant Nos.1 to 3 and defendant No.6. He also admitted that they are all sons and daughter of second wife of Giddahalappa. Under such circumstances the points for consideration is that whether second wife of Giddahalappa is joint family member of Giddahalappa ? whether as she had share in the ancestral property of Giddahalappa ? It is well settled law that the second wife will not get any right over the property of her husband and her children only get right in the self acquired property of their father, they have no right in the ancestral property of their father. Under such circumstances when the mother's mother of the plaintiff is not a co-parcener and joint family member, the mother of

plaintiff also not the co-parcener of family of Giddahalappa. When she is not the joint family member, the plaintiff is also not the joint family member of Giddahalappa.

10. However the suit schedule property is concerned the plaintiff stated that said property is ancestral and joint family property of his mother and defendants. In order prove the same he has produced documents. Ex.P.1 reveals that there was land to an extent of 11.25 acres in Sy.No.338. Ex.P.3 reveals that the land to an extent of 11.25 acres in Sy.No.338 was jointly standing in name of Kumbar Basavarajapp and T.H.M Shambulingaiah by virtue of Pavathi Varasu from the year 1974 to 1977. Ex.P.2, Ex.P.4 to 7 are pertaining to suit schedule property which reveal that land in Sy.No.338 was standing in the name of Kumbar Basavarajappa and 4-00 acres of land in said Survey number is standing in the name of H.M. Virupakshaiah from the year 1983 to 2001. Ex.P.8 reveals that the land to an extent of 7.25 acres in Sy.No. 338 is jointly standing in the name of Kumbar Basavarajappa and T.H.U. Virupakshaiah for the year 2014-15. Ex.P.9 is certified copy mutation extract, wherein it is mentioned that there are no objection to change khata in the name of wife of Shambulingaiah. In said

document the extent and survey number of property was not mentioned. Ex.P.10 reveals that the land to an extent of 3.15 acres is Sy.No.338 was standing in the name of Kunchur Basappagari Halappa in the year 1926. The aforesaid documents disclose that there was land to an extent of 11.25 acres in Sy.No.338, out of which 4-00 acres of land is standing in the name of T.H.M. Shambulingaiah. The plaintiff is claiming 7.25 acres of land in said survey number stating that it is ancestral and joint family property of his mother and defendants. As per Ex.P.10 said 7.25 acres of land is jointly standing in the name of Kumbar Basavrajappa who is defendant No.1 and T.H.U.Virupakshaiah. The plaintiff has not made said Virupaksaiah as party in the suit. He is also not stated that what is relationship with said Virupakshaiah. However the plaintiff himself stated that he is son of Shanthamma who is daughter of second of wife of one Halappa and the suit schedule property is ancestral and joint family property. The the original propositous is Gidda Halappa. When his mother Shanthamma is daughter of second wife of Halappa, she is not a co-parcener of the family of said Halappa. If at all said Halappa died intestate, his children of 2nd wife and other legal heirs will get share in his

self acquired property only as class-I heir. In the instant suit the plaintiff himself stated that suit schedule property is ancestral and joint family property. Under such circumstances the children of second wife of Halappa will not get any share in said property. Since the plaintiff is son of daughter of second wife of Halappa he also will not get any share in the property of Halappa as his mother is not a coparcener. In view of above discussion this court is opinion that the plaintiff has failed to prove that his mother and defendants are joint family members and the suit schedule property is their ancestral and joint family property. On the other hand though the defendant No.1 has taken contention that the share has been given to mother of plaintiff at the time of marriage by way of money and jewels, in order to substantiate the same he has not adduced any evidence. However when the plaintiff has failed to prove that his mother is joint family member, giving share to her does not arise at all. Therefore in view of above discussion the written arguments submitted by the plaintiff cannot be accepted. Accordingly issue Nos.1, 2 and 4 are answered in the **Negative.**

11. ISSUE NO. 3;- The further contention of the defendant No.1 is that the suit is barred by law of limitation. Though the defendant No.1 has taken such contention, in order to substantiate the same he has not placed any material. The limitation is concerned it is a mixed question of law and facts. In a suit for partition when the defendants declined the demand of plaintiff to allot share, the cause of action will arise. In the instant suit the plaintiff stated that after the death of his mother Shanthamma he demanded share, but the defendant Nos.1 and 2 ignored the same. On the last week in the month of October 2014, the defendant Nos.1 and 2 ignored. However on perusal of records it discloses that this suit is filed on 10-11-2014, the right to sue accrues to the plaintiff when the defendant Nos.1 and 2 ignored his prayer for allotting share in the month of October 2014, which means he has filed this suit within 3 years from the date of ignore. Therefore this court is of the opinion that the plaintiff has filed this suit within period of limitation. Accordingly issue No.3 is answered in the **Negative**.

12. ISSUE NO. 5;- When the plaintiff sought relief of partition stating that his mother and defendants are Hindu undivided joint family members and suit schedule property is

their ancestral and joint family property, he has to prove the same. In the instant suit the plaintiff has failed to prove the same. As I already discussed in above issues. Therefore he is not entitled for partition. Accordingly issue No.5 is answered in the **Negative**.

13. ISSUE NO.6:- 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 the parties no order as to costs.

Draw decree accordingly.

(Dictated to the stenographer transcribed, computerized by his, revised, corrected and then pronounced by me in the open Court on 23rd day of April, 2021)

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

ANNEXURES

List of witnesses examined for the plaintiff/s :-

P.W.1 : B. Lingaraj S/o Late Jayanna
P.W.2 : Kumbar Kotrappa S/o Nandyappa

List of documents marked for the plaintiff/s :-

Exs.P.1 : Certified copy of Akarband

- Exs.P.2 to 8 : Certified copy of hand written extracts
Ex.P.9 : Certified copy of mutation extract
Ex.P.10 : Certified copy of re-settlement register
extract

List of witnesses examined for the Defendant/s :-

- Nil -

List of documents marked for the Defendant/s :-

- Nil -

Civil Judge & JMFC,
Harapanahalli.