

In the Court of Civil Judge & JMFC

Basavana Bagewadi

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Present :

**Smt. Ashwini M. Hattiholi, B.Com., LL.B.,**  
Civil Judge & JMFC, Basavana Bagewadi.

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Dated this the 31<sup>st</sup> day of January, 2019

**ORIGINAL SUIT No.381/2010**

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PLAINTIFF/s:

Basavantraya Basalingappa  
Hipparagi, age: 55 years, occ.: coolie,  
r/o.: Narasalagi, Basavan-Bagewadi  
Tq.

V/s.

DEFENDANT/s:

1. Maningappa @ Malingappa s/o.  
Ramappa Hipparagi (since  
deceased by his LRs)

1A.Sunanda w/o. Basanagouda  
Peerapur, age: 45 years, occ.:  
household work, r/o.: c/o  
P.S.Javadagi (Advocate),  
Navanagar, Karnataka Circle,  
Hubli

1B.Vidyavati w/o. Mahantagouda  
Biradar, age: 43 years, occ.:  
household work, r/o.: Halagani,

Vijayapura Tq., now at Vidyagiri,  
Hubli

1C.Gangamma w/o.Basanagouda  
Sidareddi, age: 41 years, occ.:  
household work, r/o.: Korwar,  
Sindagi Tq.

1D.Saraswati d/o. Mahalingappa  
Hipparagi, age: 39 years, occ.:  
service, r/o.: c/o P.S.Javadagi  
(Advocate), Navanagar, Karnataka  
Circle, Hubli

1E.Shakuntala w/o. Praveen  
Chitapur, age: 37 years, occ.:  
household work, r/o.: Islampur,  
Hunagund Tq., Bagalkot Dist.

1F.Dundamma @ Daneshwari w/o.  
Panchakshari Biradar, age: 34  
years, occ.: household work, r/o.;  
c/o Panchakshari Teacher, KM  
Highschool, More colony, Satara  
road, Jath, Sangli Tq.

1G.Gouramma d/o. Mahalingappa  
Hipparagi, age: 32 years, occ.:  
police, r/o.; Adarsh Nagar P.S.,  
Vijayapura

2.Parvatewwa w/o. Maningappa @  
Malingappa Hipparagi, age: 65  
years, occ.: household work, r/o.:  
Narasalagi, Basavana-Bagewadi  
Tq.

3.Basu Pomu Lamani, age: 64 years,  
occ.: agril., r/o.: Narasalagi,  
Basavana-Bagewadi Tq.

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Sri S.I.Vandalmath – Advocate for plaintiff  
 Sri B.K.Kallur – Advocate for defendants No.1& 2  
 Sri R.B.Ganakumar – Advocate for defendant-3

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|                                                       |                                   |        |      |
|-------------------------------------------------------|-----------------------------------|--------|------|
| Date of institution of the suit                       | 9.11.2010                         |        |      |
| Nature of the suit                                    | Partition and separate possession |        |      |
| Date of the commencement of recording of the evidence | 21.9.2011                         |        |      |
| Date on which judgment was pronounced                 | 31.1.2020                         |        |      |
| Total Duration                                        | Years                             | Months | Days |
|                                                       | 09                                | 02     | 22   |

**Civil Judge & JMFC  
 Basavana Bagewadi**

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### J U D G M E N T

1. This suit is filed for the relief of partition and separate possession of the plaintiff's half share in the suit properties.

2. **The brief facts of the plaintiff's case are that:**

The details of the suit properties are as under:

Land bearing Sy.No.78/1 measuring 4 acres 16 guntas situated at Ambalnur village; land bearing Sy.No.7 measuring 7 acres 36 guntas &

VPCs-162/A & 162/B both situated within the limits of Narasalagi village.

That on 14.8.1974, the father of the plaintiff by name Basalingappa predeceased his grandfather. The defendant No.2 is the wife of 1<sup>st</sup> defendant. The plaintiff is residing in a joint family along with 1<sup>st</sup> defendant i.e., his junior uncle. At the time of death of his father, the plaintiff was aged about 19 years, whereas his brothers were still minors. Hence, they were under the care and protection of 1<sup>st</sup> defendant. The suit properties as described above are the ancestral joint family properties of the plaintiff and 1<sup>st</sup> defendant of which they are in joint possession. That the plaintiff is entitled to half share in the said properties. Under the pretext that they would be eligible for availing loan from Government under the small land holders' scheme, the 1<sup>st</sup> defendant suggested the plaintiff that they should formally divide the landed properties situated in Ambalnur. Accordingly, upon the

plaintiff's consent the 1<sup>st</sup> defendant got effected relevant entries in the revenue records by giving *wardi*. Later, in order to meet out the marriage expenses of his daughters, 1<sup>st</sup> defendant intended to alienate land bearing Sy.No.78/1 of Ambalnur, which was standing in his name as per the revenue records. For which, the plaintiff suggested the 1<sup>st</sup> defendant not to alienate land bearing Sy.No.78/1 as it is having a *Well*. Per contra, he offered land bearing Sy.No.78/2 for sale that was standing in the name of himself and his brothers. 1<sup>st</sup> defendant agreed to the said proposal and sold Sy.No.78/2, which was standing in the name of plaintiff and his brothers. Since then, plaintiff and 1<sup>st</sup> defendant are in joint possession and cultivation of land bearing Sy.No.78/1. Behind his back and at the instigation of 2<sup>nd</sup> defendant, her husband viz., 1<sup>st</sup> defendant got created a fabricated entry to the effect that Sy.No.7 of Narasalagi village measuring 7 acres 36 guntas is partitioned in

favour of 2<sup>nd</sup> defendant vide ME-2216. 2<sup>nd</sup> defendant cannot claim any share in the joint family properties during the lifetime of her husband. In fact, Sy.No.7 was purchased out of the nucleus of joint family properties. Till date, partition has not taken place in respect of suit properties in their family by metes and bounds. When the plaintiff requested 1<sup>st</sup> defendant to allot his half share in the said properties, he flatly refused. Hence, this suit for appropriate reliefs.

3. Defendants No.1 & 2 filed their written statement admitting the genealogy. However, they denied the the fact that suit properties are the ancestral joint family properties. In fact, they specifically contended that partition has been effected in their family in the year 1960 itself i.e., much prior to the death of father of defendant No.1 in the year 1977. Further, prior to 1960, the 1<sup>st</sup> defendant obtained a license and started a *kirana* shop. Whereas, 2<sup>nd</sup> defendant

was conducting tailoring classes. Out of the income derived from *kirana* shop and tailoring classes, they purchased land bearing Sy.No.7 of Narasalagi village. The plaintiff has sold the property allotted to his share in the family partition i.e., Sy.No.78/2 measuring 4 acres of Ambalnur village in favour of one Basu Lamani, who is not made as a party to the suit. Hence, the suit is bad for non-joinder of necessary parties and for non-inclusion of all the joint family properties. The valuation arrived at in the plaint and the Court fee paid thereon is insufficient. This Court has no pecuniary jurisdiction to try the suit. Only with a *malafide* intention to gulp the properties of defendants, plaintiff has filed this vexatious suit, which is liable to be dismissed with exemplary costs.

4. The purchaser of the land bearing Sy.No.78/2 of Ambalnur village measuring 4 acres viz., Basu Lamani, who was later on impleaded in the suit, filed his separate written statement supporting

plaint averments. However, he particularly contended that he is a *bonafide* purchaser of the aforesaid property for value.

5. Based on the above pleadings, my learned

Predecessor had framed following issues:

1. Whether the plaintiff proves that himself & the defendants are members of Hindu joint family and suit schedule properties are their joint family properties?
2. Whether the plaintiff is entitled for partition and separate possession of his half share in the suit schedule properties?
3. Whether the plaintiff is entitled for mesne profits?
4. Whether the defendants prove that there was previous partition and plaintiff has taken his share in the suit properties?
5. Whether the defendants prove that suit is bad for non-joinder of necessary parties?
6. Whether the defendants prove that suit is bad for non-joinder of necessary joint family properties?
7. What order or decree?

Additional Issues:

1. Whether the defendant No.3 proves that he is a *bonafide* purchaser of the property?



6. The plaintiff examined himself as PW-1. Exs.P-1 to 20 were marked on his behalf. Per contra, 1<sup>st</sup> defendant got examined himself as DW-1. Exs.D.1 to 40 were marked. One witness was examined on behalf of defendants No.1 & 2 as DW-2. The defendant No.3 was examined as DW-3.

7. Heard the arguments on both sides. Perused the pleadings and evidence on record. My findings on the above issues are as under:

|                  |   |                                       |
|------------------|---|---------------------------------------|
| Issue No.1       | : | In the Negative,                      |
| Issue No.2       | : | In the Negative,                      |
| Issue No.3       | : | In the Negative                       |
| Issue No.4       | : | In the Affirmative                    |
| Issue No.5       | : | In the Affirmative                    |
| Issue No.6       | : | In the Affirmative                    |
| Addl. Issue No.1 | : | Does not survive for consideration;   |
| Issue No.7       | : | As per final order for the following: |

### R E A S O N S

8. **Issues No.1 to 6 and Addl. Issue No.1:** As these issues are interconnected, they are taken up

together for common discussion in order to avoid repetition of facts.

9. Plaintiff examined himself as PW-1. His examination-in-chief filed by way of affidavit is a replica of plaint averments. Ex.P-1 is the RTC of land bearing Sy.No.78/1 of Ambalnur village for the years 2009-10, which is standing in the name of defendant No.1. RTC of land bearing Sy.No.7 of Narasalagi village for the years 2009-10, which is exhibited at Ex.P-2 goes to show that the name of defendant No.2 is appearing in columns No.9 & 12 thereof. Exs.P-3 & 4 are the VPC extracts of property No.162/A & 162/B of Narasalagi village that are standing in the names of Basalingappa (plaintiff's father) and defendant No.1 respectively. Certified copy of ME-499 of Ambalnur village, that is marked at Ex.P-5 reveals that Sy.No.34 (later on renumbered as Sy.No.78) was purchased by Ramappa Hipparagi (plaintiff's grandfather) on 8.8.1953. Ex.P-6 the certified copy of ME-684 indicates that Sy.No.34

(renumbered as Sy.No.78) was standing in the name of Ramappa Hipparagi. The certified copies of handwritten RTCs of Sy.No.78/1 & 78/2 for the years 1995 to 1999 standing in the names of defendant No.1 & plaintiff respectively are marked at Exs.P-8 & 9. Ex.P-10 is the certified copy of ME-867 dated 20.1.1978 pertaining to Sy.No.78 of Ambalnur village, which reveals that in the family partition Ramappa Hipparagi relinquished his share in the said land in favour of his son i.e., 1<sup>st</sup> defendant herein which has been accepted by his grandson i.e., present plaintiff. Ex.P-7 is the hand-written RTC of land bearing Sy.No.78 of Ambalnur village for the years 1988 to 1994, which is standing in the name of defendant No.1. The certified copy of ME-1405 marked at Ex.P-11 discloses that on 31.7.1995 partition was effected with respect to Sy.No.78, as per which Sy.No.78/1 measuring 4 acres 16 guntas fell to the share of 1<sup>st</sup> defendant, whereas Sy.No.78/2 measuring 4 acres was

allotted to the share of plaintiff and his brothers. The register extract pertaining to Sy.No.7 of Narasalagi village is marked at Ex.P-12. The entry of 1<sup>st</sup> defendant's name in the records of Sy.No.7 of Narasalagi village as per ME-1013 vide registered sale-deed is marked at Ex.P-13. Likewise, the entry of 2<sup>nd</sup> defendant's name in the revenue records of Sy.No.7 of Narasalagi village measuring 7 acres 36 guntas effected vide a *wardi* given by defendant No.1 and recorded as per ME-2216 is marked at Ex.P-14. Exs.P-15 & 16 are the extracts of death register pertaining to Ramappa Hipparagi. Registered sale-deeds pertaining to house properties are marked at Exs.P-17 & 18. The caste and date of birth certificate of plaintiff is marked at Ex.P-19. The order dated 11.5.1982 as per which plaintiff was granted Sy.No.31 of Narasalagi village measuring 5 acres 26 guntas is marked at Ex.P-20.

10. At the outset, it is worth mentioning that suit is bad for non-joinder of necessary parties because

the plaintiff who has depicted genealogy in the plaint showing that his father Basalingappa died leaving behind his three sons viz., Basavantraya (plaintiff), Somaraya (deceased) and Prabhu, has not arrayed said Prabhu and the wife of deceased Somaraya as parties to the suit. The law is very well settled that in a suit for partition all the members of joint family must be made as parties to the suit. The assertion of the plaintiff in this regard that he has filed the suit on their behalf in the capacity of a manager of Hindu undivided family is untenable.

11. Further, certified copy of ME-1045 (marked at Exs.P-11 & Ex.D-25) discloses that in the year 1995 i.e., on 31.7.1995 partition was effected with respect to Sy.No.78, as per which Sy.No.78/1 measuring 4 acres 16 guntas fell to the share of 1<sup>st</sup> defendant, whereas Sy.No.78/2 measuring 4 acres was allotted to the share of plaintiff and his brothers. The evidence on record reveals that since then revenue records of the

above mentioned properties are appearing in their respective names and they are possessing the properties separately on the basis of such division. In fact, PW-1 himself accepted the suggestions in this regard as, “ಆ ರೀತಿ ವಾಟ್ಸಿ ಮಾಡಿಕೊಂಡ ಪ್ರಕಾರ 1995ರಲ್ಲಿ ಡ ಮಂಜೂರು ಆಗಿದೆ ಅಂದರೆ ಸರಿ.” Going further, though he contended that “ವಾಟ್ಸಿ ಆಗಿಲ್ಲ, ಚಿಕ್ಕ ಹಿಡುವಳಿದಾರರಿಗೆ ಸರಕಾರದ ಸಾಲ ಸೌಲಭ್ಯ ಮತ್ತು ಅನುಕೂಲಕ್ಕಾಗಿ ಆ ರೀತಿ ಮಾಡಿಕೊಳ್ಳಲಾಗಿತ್ತು. ಸಾಕ್ಷಿ ಸ್ವತಃ ಹೇಳುತ್ತಾರೆ ವಾಟ್ಸಿ ಆಗಿಲ್ಲ, ಆದರೆ ನಮ್ಮ ಕುಟುಂಬದಲ್ಲಿ ಹೊಂದಾಣಿಕೆ ಮಾಡಿಕೊಂಡಿರುತ್ತೇವೆ.” However, he admitted that “ಸದರಿ ಡ ಆದೇಶವನ್ನು ಇನ್ನೂ ವರೆಗೂ ನಾನು ಎಲ್ಲಿಯೂ ಪ್ರಶ್ನೆ ಮಾಡಿಲ್ಲ ಅಂದರೆ ಸರಿ.”

12. PW-1 has not explained as to why he did not choose to challenge ME-1045 if in case it was created formally for their convenience and just in order to avail loan facilities from the Government. This fortifies the fact that assertion of plaintiff is nothing but an after thought, which is not at all justified by any evidence. This goes to show that ME-1045 has attained finality and also that the plaintiff admits its correctness.

13. The conduct of the plaintiff who has come up with a suit for partition is also noteworthy. That is to say, at one stretch he says that Sy.No.78 was formally divided just in order to avail the benefit of Government facilities. Whereas, he has filed suit only with regard to Sy.No.78/1 that had fallen to 1<sup>st</sup> defendant's share. Per contra, he has already sold Sy.No.78/2 (that was allotted to him and his brothers) to the 3<sup>rd</sup> defendant in the year 1988 itself. Interestingly, he admits the said fact in the course of his cross-examination as “ನನ್ನ ಪಾಲಿಗೆ ಬಂದ ಪಿತ್ರಾರ್ಜಿತ 4 ಎಕರೆ ಅಸ್ತಿ ಇದನ್ನು ನಾನು 1998 ನೇ ಇಸ್ವಿಯಲ್ಲಿ ಮಾರಾಟ ಮಾಡಿರುತ್ತೇನೆ ಅಂದರೆ ಸರಿ.” Admittedly, plaintiff has not included Sy.No.78/2 in the instant suit. Furthermore, he has sold land bearing Sy.No.31 measuring 5 acres 17 guntas of Narasalagi village vide registered sale-deed dated 26.5.2004, which is evident from Ex.D-4. The said property is also not made as a subject matter of the suit. When suggested in this regard, PW-1 admitted that “ನಮ್ಮ ಕುಟುಂಬಕ್ಕೆ ಸೇರಿದ

ಇನ್ನೊಂದು ಆಸ್ತಿ ನರಸಲಗಿ ಗ್ರಾಮದ ಸರ್ವೆ ನಂ.31 ಕ್ಷೇತ್ರ 5 ಎಕರೆ ಅಂತ

ಇದೆ ಅಂದರೆ ಸರಿ.” Though he further deposed that

“ಸಾಕ್ಷಿಯು ಸ್ವತಃ ಹೇಳುತ್ತಾರೆ ಅದು ನನಗೆ ಸರಕಾರದಿಂದ ಬಂದಿರುತ್ತದೆ.”

However, he admitted that “ಅದು ನನಗೆ ಮಂಜೂರಾಗಿದೆ

ಅಂತ ತೋರಿಸಲು ನಾನು ಯಾವುದೇ ದಾಖಲೆಗಳನ್ನು ಹಾಜರುಪಡಿಸಿಲ್ಲ.”

Therefore, failure to include all the properties of joint family in the suit schedule i.e., a suit for partial partition is bad in law. Moreover, it is an important circumstance which speaks volumes against the plaintiff's act. That is to say, the plaintiff cannot be permitted to blow hot and cold at the same time i.e., contending that the properties standing in his name are self acquired properties and that the properties standing in the names of defendants No.1 & 2 are joint family properties.

14. Even if the partition that was effected vide ME-1045 is considered to be a family arrangement, such arrangement clearly operates as an estoppel so as to preclude the plaintiff who has taken advantage under the aforementioned agreement



from revoking or challenging the same. Hence, the plaintiff would be estopped from denying the existence of family arrangement or from questioning its validity. Therefore, ME-1045 is clearly binding on the parties to it. More so upon the plaintiff who has acted upon it.

15. Under Hindu Law, it is not necessary that the partition should be effected under a registered partition deed. Even a family arrangement is enough to effectuate partition between coparceners and to confer a right to a separate share and enjoyment thereof. In this regard, the learned counsel appearing for the defendants No.1 & 2 has placed his reliance upon a decision reported in **AIR 1995 SC 1728** wherein it is held that, HINDU LAW – PARTITION – NOT NECESSARY THAT PARTITION SHOULD EFFECTED BY REGISTERED PARTITION DEED – EVEN A FAMILY ARRANGEMENT IS ENOUGH TO EFFECTUATE THE PARTITION BETWEEN COPARCENERS AND TO CONFER RIGHT TO A

SEPARATE SHARE AND ENJOYMENT THEREOF.

As the said settlement vide ME-1045 consisted of the recognition of the right asserted by each other, none of the parties to it could be permitted to impeach it thereafter, much less, the plaintiff. That is to say, the plaintiff cannot be now permitted to resile from the family arrangement and claim a right inconsistent with the terms mentioned in it. Another thing that deserves notice is that the rule of estoppel which flowed from the conduct of the plaintiff who having taken benefit under the settlement keeps his mouth shut for full 15 years and later tries to resile from it, that too only in respect of the share which was allotted to defendant No.1 at the time of family arrangement.

16. In the case on hand, the factum of partition was evidenced by entries in the mutation and record of rights which are maintained in the official course of business, the correctness of which was not questioned by the plaintiff till date. This

fortifies the claim of the defendant No.1 that there was a previous partition, in which the plaintiff has taken his share in Sy.No.78 of Ambalnur village. In support of the above principle reliance is placed upon a decision reported in **AIR 1995 SC 1728** wherein the Hon'ble Apex Court has held that "*Evidence Act, 1872 – Sec.35 – Entries in the record or rights regarding partition is a relevant piece of documentary evidence in support of the oral evidence. Under those circumstances when the factum of partition was evidenced by the entries in the record of rights, which was maintained in the official course of business, the correctness thereof was not questioned, it corroborates the oral evidence given.*" The plaintiffs right with respect to claiming share in Sy.No.78/1 is also hit by Article-110 of Limitation Act, which provides a period of limitation of 12 years for a person excluded from a joint family property to enforce a right to share therein.

17. As far as land bearing Sy.No.7 Narasalagi village is concerned, PW-1 has deposed that the said landed property was purchased out of the nucleus of joint family properties. Whereas DW-1 contends that Sy.No.7 was purchased by him out of the income derived from the *kirana* shop run by him as well as tailoring classes conducted by defendant No.2. PW-1 has categorically admitted during the course of his cross-examination that “1960 ಇಸ್ವಿ ಗಿಂತ ಪೂರ್ವದಲ್ಲಿ 1 ನೇ ಪ್ರತಿವಾದಿ ಕಿರಾಣಿ ಅಂಗಡಿ ನಡೆಸಲು ಲೈಸೆನ್ಸ್ ಪಡೆದುಕೊಂಡು, ಇಲ್ಲಿಯವರೆಗೂ ಕಿರಾಣಿ ಅಂಗಡಿ ನಡೆಸಿಕೊಂಡು ಬಂದಿರುತ್ತಾನೆ ಅಂದರೆ ಸರಿ.” Further, in support of his contention DW-1 has produced the *khata-khirdi* books from 1961 to 2012 (Exs.D-27 to 40), certificates issued by Weights and Measurement Department (Exs.D-5 to 17). These documents fortify the defence of 1<sup>st</sup> defendant that he had separate source of income to purchase Sy.No.7 of Narasalagi village. Per contra, plaintiff has not placed any material before the Court to show that Sy.No.7 was purchased out of the nucleus of

other joint family properties. That is to say, there is no material to show that said property was joint or family of plaintiff and defendant No.1 possessed joint funds. In fact, there was no nucleus to add Sy.No.7 by way of accretion to the joint family properties. On the other hand, Ex.D.18 indicates that the title deed in respect of Sy.No.7 stood in the name of defendant No.1 alone and he was in possession thereof exclusively from the date of purchase. At no point of time had the plaintiff made any claim in respect of Sy.No.7. This itself shows that the property referred supra was never treated as joint family property.

18. The one who asserts has to prove that the property is a joint family property. If however, the person so asserting proves that there was nucleus with which the joint family property could be acquired, there would be presumption of the property being joint and the onus would shift on the person who claims it to be self acquired

property to prove that he purchased property with his own funds. In this regard, the learned counsel appearing for defendants No.1 & 2 has relied upon a decision reported in **2007(4) KCCR SN 278** wherein it is held that “HINDU LAW – ONUS OF PROOF REGARDING – JOINT FAMILY PROPERTY – ON THE PERSON WHO PLEADS THAT IT IS BROUGHT OUT OF JOINT FAMILY NUCLEUS.” However, except the self serving statement of PW-1, there is nothing forthcoming either in the shape of documentary or oral evidence to show that plaintiff had contributed any sums of money in the purchase of Sy.No.7 or that said property was purchased out of the nucleus of joint family properties. Assertions and acclamations do not produce a strong case. Even otherwise, there is no presumption regarding property being joint family property only on account of existence of joint Hindu family. No such presumption is available for the plaintiff in

law and on facts also there is no legal evidence worthwhile to raise any presumption.

19. The plaintiff who asserts that he is residing in a joint family along with defendant No.1, admitted in the course of his cross-examination that “ನಾವೆಲ್ಲರೂ ಒಟ್ಟಾಗಿಯೇ ಇದ್ದೇ ವೆ ಅಂತ ತೋರಿಸಲು ನಾನು ಯಾವುದೇ ದಾಖಲೆಗಳನ್ನು ಹಾಜರುಪಡಿಸಿಲ್ಲ ಅಂದರೆ ಸರಿ. ನಾವು ಬೇರೆ ಬೇರೆ ಮನೆಗಳಲ್ಲಿ ವಾಸ ಮಾಡುತ್ತಿದ್ದೇ ವೆ ಅಂದರೆ ಸರಿ.” In law, no presumption of existence of a joint nucleus can be raised, more so in a case where there had been disruption in a joint family status. However, it is well known that although separate mess, separate residence, separate cultivation and separate transactions of the properties by themselves may not be conclusive proof of partition. But, taking into consideration the cumulative effect thereof, the same may lead to an inference of partition. The very fact that the plaintiff has alienated Sy.No.78/2 which was in his possession, in the year 1998 itself, goes to show that the parties to the suit have been dealing with their properties

separately. As noticed herein before, in the instant case, the plaintiff has miserably failed to prove the existence of any joint nucleus, far less the fact that the joint family was in possession of nucleus sufficient to make the impugned acquisition. In this view of the matter, the question of raising a presumption that the acquisitions which stand in the name of defendants No.1 & 2 were made from the joint family fund does not arise. It is also evident that the parties have separated themselves long back and had been in separate possession and enjoyment of their respective lands. They have also been dealing with the properties separately.

20. As far as VPC-162 is concerned, the following portion of the cross-examination of DW-1 deserves notice:

“ನನ್ನ ತಂದೆ, ನಾನು, ನಮ್ಮ ಅಣ್ಣ ನಾವು ಮೂರು ಜನ ಒಟ್ಟಾಗಿರುವಾಗಲೇ ನರಸಲಗಿ ಗ್ರಾಮದಲ್ಲಿ ಮೂರು ಮನೆಗಳನ್ನು ನಮ್ಮ ಜಂಟಿ ಕುಟುಂಬಕ್ಕೆ ಖರೀದಿಸಿದ್ದೇವು ಎಂದರೆ ಸರಿಯಲ್ಲ. ಸಾಕ್ಷಿ ಸ್ವತಃ ಹೇಳುತ್ತಾರೆ ಪಂಚಾಯತಿ ಆಸ್ತಿ ನಂ. 163 ಇದನ್ನು ನಾನು ಸ್ವತಃ



ಖರೀದಿಸಿದ್ದೇನೆ. ಉಳಿದ್ದದ್ದು ನಮ್ಮ ಒಟ್ಟು ಕುಟುಂಬದ ಆಸ್ತಿ. ನಮ್ಮ ತಂದೆ ಜೀವಂತ ಇರುವಾಗಲೇ ಪಂಚಾಯತಿ ಆಸ್ತಿ ನಂ.162 ರಲ್ಲಿ ಭಾಗ ಮಾಡಿಕೊಟ್ಟಿದ್ದಾರೆ. ಸದರಿ ಮನೆ ನಂಬರ 162 ಬಿ ಇದರ ಖರೀದಿ ಪತ್ರ ನನ್ನ ಬಳಿ ಇರುತ್ತದೆ. ಸಾಕ್ಷಿಯು ಸ್ವತಃ ಹೇಳುತ್ತಾರೆ ವಾದಿಯ ಮನೆಯ ಖರೀದಿ ಪತ್ರ ವಾದಿ ಕಡೆ ಇದೆ. ನನ್ನ ಮನೆಯ ಉತ್ತರ ದಿಕ್ಕಿಗೆ ವಾದಿಯ ಮನೆ ಇದೆ ಎಂದರೆ ಸರಿ. ವಿಪಿ ಸಿ ನಂ.162 ರಲ್ಲಿ ನಮ್ಮ ತಂದೆ ತನ್ನ ಜೀವಿತಾವಧಿಯಲ್ಲಿ ಭಾಗಗಳನ್ನು ಮಾಡಿ, 162 ಎ ನಮ್ಮ ಅಣ್ಣನಿಗೆ, 162 ಬಿ ನನಗೆ ಭಾಗ ಮಾಡಿಕೊಟ್ಟಿರುತ್ತಾರೆ.

21. DW-2 Mallappa Halihal deposed in support of the defence taken by defendant No.1. He withstood the test of cross-examination, during which he deposed that “ ರಾಮಪ್ಪರವರ ಮನೆತನಕ್ಕೆ ಅಂಬಳ್ಳೂರ ಸೀಮೆಯಲ್ಲಿ ಒಂದೇ ಜಮೀನಿತ್ತು. ಅದನ್ನು ಮಕ್ಕಳಿಗೆ ಆತ ಹಂಚಿಕೊಟ್ಟ. ಒಟ್ಟು ಎರಡು ಮನೆಗಳು ಇದ್ದವು. ಅವುಗಳನ್ನು ಒಂದಂದರಂತೆ ತಮ್ಮ ಮಕ್ಕಳಿಗೆ ಹಂಚಿಕೊಂಡಿದ್ದರು. ನರಸಲಗಿ ಗ್ರಾಮದ ಜಮೀನ ಸರ್ವೆ ನಂ.31 ಕ್ಷೇತ್ರ 5 ಎಕರೆ ಇದು ವಾದಿಗೆ ಸರಕಾರದಿಂದ ಮಂಜೂರಾದ ಜಮೀನು ಎಂದರೆ ಸರಿ. ಸ್ವಲ್ಪ ದಿನಗಳ ನಂತರ ಆ ಜಮೀನನ್ನು ಮಾರಾಟ ಮಾಡಿರುತ್ತಾನೆ ಅಂದರೆ ಸರಿ. ಸಾಕ್ಷಿ ಸ್ವತಃ ಹೇಳುತ್ತಾರೆ ಇನ್ನೊಂದು ಜಮೀನನ್ನು ಸಹ ಮಾರಿದ್ದಾನೆ.”

22. When a prior partition is proved, the presumption is that all the joint family properties have been divided. Jointness of a Hindu family comes to an end as soon as a partition is proved. If the plaintiff even after such previous partition comes to the Court with a clean case that though there was a partition, yet there was no division by metes and bounds, the Court can certainly reopen the partition if it is proved to the satisfaction of the Court that though there was partition of the shares, still the properties were not divided by metes and bounds. But, the plaintiff in the instant suit did not allege the said fact in the plaint. He only claimed partition with respect to Sy.No.78/1, Sy.No.7 & VPC-162/A and 162/B claiming them to be joint family properties which are liable to be partitioned. On the contrary, it is the 1<sup>st</sup> defendant who has proved that there was a partition with respect to Sy.No.78 and VPC-162 as a result of which the joint family properties have been disrupted and

the properties were divided among him and plaintiff and accordingly, they are possessing the properties separately on the basis of such division. In such a case, when the prior partition has been proved, the fresh suit for partition by the plaintiff is liable to be dismissed.

23. From over all appreciation of the evidence on record from the spectrum of law laid down in the decisions cited supra, it is amply clear that Sy.No.78 of Ambalnur village which was purchased by Ramappa Hipparagi (father of defendant No.1 & grandfather of plaintiff) stood in the name of 1<sup>st</sup> defendant till 1995 and was later on partitioned (as evidenced by ME-1045), as per which Sy.No.78/1 fell to 1<sup>st</sup> defendant's share and Sy.No.78/2 was allotted to the plaintiff's share. Further, it is also evident that Sy.No.7 is the self acquired property of the 1<sup>st</sup> defendant which was purchased by him out of his own income. As far as VPC-162 is concerned, it was orally partitioned between the defendant

No.1 and his elder brother i.e., plaintiff's father, during the lifetime of original propositus itself and there is no bar for oral partition in Hindu Law. In this regard, learned counsel for the defendants No.1 & 2 has relied upon a decision reported in **2011 (4) KCCR 2930 (DB)**, wherein it is held that HINDU LAW – PARTITION – HINDU JOINT FAMILY – WHETHER PARTITION CAN BE ORAL – HELD, Yes.

24. The purchaser of land bearing Sy.No.78/2 i.e., the 3<sup>rd</sup> defendant who was examined as DW-3 has deposed in support of plaintiff's claim. However, in the course of his cross-examination, he admitted that “ಸರ್ವೆ ನಂ.78/2 ವಾದಿಯ ಕಡೆಯಿಂದ ಖರೀದಿಸಿದ್ದೇನೆ ಅಂದರೆ ಸರಿ.”. It is relevant to note that after partition plaintiff was liberty to deal with Sy.No.78/2. Accordingly, he sold it in favour of 3<sup>rd</sup> defendant. Therefore, the question of considering the fact whether 3<sup>rd</sup> defendant is a *bonafide* purchaser for value does not arise. Accordingly, plaintiff has utterly failed to

discharge the burden of proof that heavily rested upon him. Moreover, the evidence on record clearly indicates that the plaintiff has come up with this false suit by suppressing the true facts, just in order to obtain unlawful gain if possible. Consequently, issues No.1 to 6 and additional issue No.1 are answered accordingly.

25. **Issue No.7** : In view of discussion made above, I proceed to pass the following:

**O r d e r**

The suit of plaintiff is hereby dismissed  
with costs.

Draw decree accordingly.

(Dictated directly on the computer to the Stenographer,  
script revised, corrected, signed and then pronounced  
by me in the Open Court on this the 31<sup>st</sup> day of  
January, 2020)

**(Ashwini .M. Hattiholi)**  
Civil Judge & JMFC,  
Basavana Bagewadi.

\* \* \*

Annexure to Judgment:

**Witnesses examined for plaintiffs:**

PW-1 : Basavantraya Hipparagi

**Documents exhibited for plaintiffs:**

- Ex.P-1 : RTC of Sy.No.78/1 of Ambalnur village
- Ex.P-2 : RTC of Sy.No.7 of Narasalagi village
- Ex.P-3 : Property extract of VPC-162/A of  
Narasalagi village
- Ex.P-4 : Property extract of VPC-162/B of  
Narasalagi village
- Ex.P-5 : Certified copy of ME-499 of Ambalnur
- Ex.P-6 : Certified copy of ME-684 of Ambalnur
- Ex.P-7 : Certified copy of RTC of Sy.No.78 of  
Ambalnur village for the year 1988-94
- Ex.P-8 : Certified copy of RTC of Sy.No.78/2 of  
Ambalnur village for the year 1995-96  
& 1996-97
- Ex.P-9 : Certified copy of RTC of Sy.No.78/1 of  
Ambalnur village for the year 1993-94,  
1994-95 & 1995-96
- Ex.P-10 : Certified copy of ME-867 dated 20.1.1978
- Ex.P-11 : Certified copy of MR No.1405 dated  
31.7.1995 of Ambalnur village
- Ex.P-12 : Certified copy of ME-938 dated 30.5.1969  
of Narasalagi village
- Ex.P-13 : Certified copy of ME-1013 dated  
19.3.1972 of Narasalagi village
- Ex.P-14 : Certified copy of ME-2216 dated 4.6.1998  
of Narasalagi village
- Ex.P-15 : Certified copy of death extract
- Ex.P-16 : Certified copy of death extract
- Ex.P-17 : Original sale-deed dated 17.8.1972
- Ex.P-18 : Original sale-deed dated 7.3.1956
- Ex.P-19 : Caste-cum-Birth certificate of plaintiff  
issued by school
- Ex.P-20 : Order of Land Tribunal dated 11.5.1982  
granting Sy.No.31 measuring 5 acres 26  
guntas

**Witnesses examined for defendants:**

DW-1 : Maningappa Hipparagi  
DW-2 : Mallappa Halihal  
DW-3 : Basu Lamani

**Documents exhibited for defendants:**

Ex.D-1 : Certified copy of sale-deed of Sy.No.31 of Narasalagi village  
Ex.D-2 : Certified copy of sale-deed of Sy.No.78/2 of Ambalnur village  
Ex.D-3 : Original sale-deed of VPC-163  
Ex.D-4 : Certified copy of sale-deed of Sy.No.31 of Narasalagi village  
Ex.D-5 : Receipt issued by Inspector of Legal Metrology Department dated 10.4.1997  
Ex.D-6 : Receipt issued by Inspector of Legal Metrology Department dated 9.4.1998  
Ex.D-7 : Receipt issued by Weights & measurment repair shop  
Ex.D-8 : Receipt issued by Inspector of Legal Metrology Department dated 27.4.1998  
Ex.D-9 : Receipt issued by Weights & measurment repair shop dated 27.4.1998  
Ex.D-10 : Receipt issued by Inspector of Legal Metrology Department dated 26.4.1999  
Ex.D-11 : Receipt issued by Inspector of Legal Metrology Department dated 10.4.1999  
Ex.D-12 : Receipt issued by Inspector of Legal Metrology Department dated 9.4.2000  
Ex.D-13 : Receipt issued by Weights & measurment repair shop dated 10.4.1999  
Ex.D-14 : Receipt issued by Inspector of Legal Metrology Department dated 5.4.2000  
Ex.D-15 : Receipt issued by Weights & measurment repair shop dated 25.4.2000  
Ex.D-16 : Receipt issued by Inspector of Legal Metrology Department dated 24.4.2001  
Ex.D-17 : Receipt issued by Inspector of Legal Metrology Department dated 17.4.2001  
Ex.D-18 : Original sale-deed of Sy.No.7 dated 27.3.1968

- Ex.D-19 : Caste-cum-Birth certificate of plaintiff  
issued by the school
- Ex.D-20 : Residential Certificate issued by PDO,  
Narasalagi
- Ex.D-21 : Property extract of VPC-162/B of  
Narasalagi village
- Ex.D-22 : Property extract of VPC-162/A of  
Narasalagi village
- Ex.D-23 : Certified copy of ME-2243 dated 5.9.1998  
of Narasalagi village
- Ex.D-24 : Certified copy of MR-42/2003-04 dated  
9.7.2004 of Narasalagi village
- Ex.D-25 : Certified copy of ME-1405 dated  
31.7.1995 of Ambalnur village
- Ex.D-26 : Certified copy of ME-1496 dated  
8.5.1998 of Ambalnur village
- Ex.D-27 : Books of accounts pertaining to the  
to D-40 : shop for the years 1961 to 2012

**Civil Judge & JMFC  
Basavana Bagewadi**