

IN THE COURT OF ADDL.CIVIL JUDGE, BASAVANA-BAGEWADI

PRESENTS

Sri. Shivaraju H.S.

B.A.L. L.L.B.,

Addl. Civil Judge, Basavana-Bagewadi

O.S.No.478/2014

DATED THIS THE 23RD DAY OF AUGUST, 2019

PLAINTIFFS :

1. Bhimashi S/o Thavaru Lamani @ Pawar
Age: 65 years, Occ: Agriculture
2. Ramu S/o Thavaru Lamani
Age: 56 years, Occ: Agriculture
Both R/o- Kudagi LT,
Basavana-Bagewadi Taluka

(By Sri.G.B.Bagewadi, Advocate)

Versus

DEFENDANTS:

1. Hemalabai W/o Dhanasing Lamani
Age: 70 years, Occ: Household
2. Madev S/o Dhanasing Lamani
Age: 50 years, Occ: Agriclture
3. Appu S/o Dhanasing Lamani
Age: 48 years, Occ: Agriculture
4. Malaji S/o Dhanasing Lamani
Age: 46 years, Occ: Agriculture

5. Basavaraj S/o Dhanasing Lamani
Age: 44 years, Occ: Agriculture
All are R/o- Kudagi LT,
Basavana-Bagewadi Taluka
6. Shantabai W/o Motilal Rathod
Age: 54 years, Occ: Household
R/o- Sunag Tanda, Bilagi Taluka
7. Shushilabai W/o Seetaram Rathod
Age: 52 years, Occ: Household
R/o- Ingaleshwar Tanda,
Basavana-Bagewadi Taluka
8. Kastrubai W/o Seetaram Rathod
Age: 35 years, Occ: Household
R/o- Wadawadagi village
Basavana-Bagewadi Taluka
9. Papibai W/o Santosh Nayak
Age: 47 years, Occ: Household
R/o- Muchakandi Tanda
Bagalkot Taluka
10. Shankar S/o Thavaru Lamani
Age: 68 years, Occ: Agriculture
R/o- Kudagi L.T.,
Basavana-Bagewadi Taluka
11. Seenabai W/o Annu Rathod
Age: 48 years, Occ: Household
R/o- Satihal Tanda,
Basavana-Bagewadi Taluka
12. The Manager
KBJNL Almatti
Basavana-Bagewadi Taluka

(D-1 to 6 & 8 to 12 exparte)
(D-7 in person)

Date of Institution of the suit.	01-12-2014
Nature of the suit.	Partition and Separate Possession and Permanent Injunction
Date of the commencement of recording of the evidence.	13-08-2019
Date on which the Judgment was pronounced.	23-08-2019
Total Duration	Year/s Month/s Day/s 04 08 22

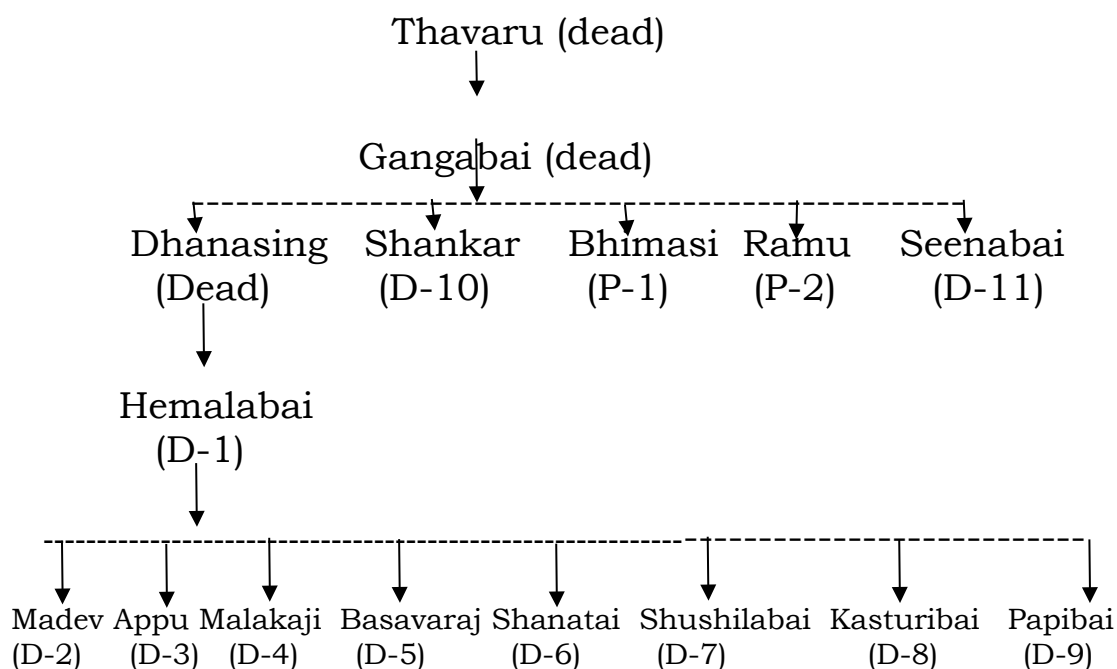
J U D G M E N T

The plaintiffs have filed this suit against the defendants for the relief of partition and separate possession claiming their 1/5th share each in lands bearing CB No.136/2A measuring 03 acres 33 guntas and CB No.136/1 measuring 06 acres 08 guntas both situated at Kudagi village of Basavana-Bagewadi taluka and also relief of permanent injunction restraining the defendant Nos.1 and 10 from receiving compensation from the office of defendant No.12.

2. Brief facts of case of the plaintiff's is as under:

It is specific case of the plaintiffs' that, Gangabai is wife of main propertus, the plaintiffs, defendant No.10 and

11 are their children, defendant No.1 is wife of Dhanasing who is first son of propositus, defendant Nos.2 to 9 are her children. The genealogy referred in below shown at schedule “A” as follows:



3. The lands bearing CB No.136/2A measuring 03 acres 33 guntas and CB No.136/1 measuring 06 acres 08 guntas both situated at Kudagi village of Basavana-Bagewadi taluka are the subject matter of the suit shown at schedule “B” is referred hereinafter as “suit lands” or “suit schedule properties”. The said properties ancestral properties of plaintiff and defendant Nos.1 to 11, they have been in joint possession and enjoyment of the same. The hand sketch

produced alongwith plaint is also part and parcel of the plaint.

4. Further it is also specific case of the plaintiff that, the relationship between plaintiff and defendant Nos.1 to 10 becomes strained. Therefore elderly persons of village divided the suit lands into four portions as shown in the plaint hand sketch. "ABEF" is in the possession of plaintiff No.1, "EFGH" area is in possession of plaintiff No.2, "BCDE" is in possession of defendant No.10 and "BEGI" is in possession of defendant Nos.1 to 9. They are cultivating the lands as per division for their convenience. Accordingly, the plaintiffs approached the defendant No.10 and requested to allot their share. But he denied and threatened that, he will retain land bearing CB No.136/2A as same is acquired by defendant No.2 and denied their share in the said land. Immediately plaintiffs verified records and came to know certification of ME No.5293 by defendant No.10 in collusion with revenue authority. The said mutation is not binding on their share. Since defendant No.12 is statutory authority, application is filed U/Sec.80(2) of CPC seeking dispense of

notice. Hence, on 24.10.2014 when defendant No.10 denied to effect partition and to allot 1/5th share each of the plaintiffs, the cause of action arose for the plaintiffs to file this suit. Hence, the plaintiffs have constrained to file the suit against the defendants for the relief of partition and separate possession claiming their 1/5th share each in the suit lands bearing CB No.136/2A measuring 03 acres 33 guntas and CB No.136/1 measuring 06 acres 08 guntas both situated at Kudagi village of Basavana-Bagewadi taluka by metes and bounds and also relief of permanent injunction restraining the defendant Nos.1 and 10 from receiving compensation amount from the office of defendant No.12.

5. After of service of summons, the defendant No.7 appeared before the court.

6. Inspite of service of suit summons, the defendant Nos.1 to 6 and 8 to 12 have not appeared before the court, hence, they are placed as exparte.

7. In order to prove their case, plaintiff No.1 himself examined as PW-1 and on behalf of plaintiff as many as four documents are marked as per Ex.P-1 to 4. The defendants have not adduced any evidence. The documents relied upon by the plaintiffs are given in the annexure of this Judgment.

8. Heard arguments, perused the evidence and documents on record.

9. Upon hearing arguments and on material placed on record, the following Points that would arise for consideration:

POINTS

1. Whether the plaintiffs are entitled to the relief as sought for?
 2. What Order or Decree?
10. My findings to the above Points are as under:
- Point No.1: In the Affirmative.
- Point No.2: As per final order for the following:

REASONS

11. **Point No 1 :** Here, it is specific case of the plaintiffs that, defendant No.1 is wife of first son of main propositus,

defendant Nos.2 to 9 are her children, plaintiffs, defendant No.10 and 11 are children of main propositus. The suit lands bearing CB No.136/2A measuring 03 acres 33 guntas and CB No.136/1 measuring 06 acres 08 guntas both situated at Kudagi village of Basavana-Bagewadi taluka are their ancestral properties and they have been in possession and enjoyment of the same. Further as there was dispute arose between them, upon advise held by elderly persons of the village, they have divided the properties as shown in the plaint hand ketch, "ABEF" is in possession of plaintiff, "EFGH" is in possession of plaintiff No.2, "BCDE" is in possession of defendant No.10 and "DEGI" is in possession of defendant No.1 to 10, as per the said division plaintiffs approached defendant No.10 and requested him to effect partition. But he denied and certified false and bogus mutation entry bearing ME No.5293. In spite of advise by the elderly persons of village he failed to effect partition. Hence, this suit.

12. In order to prove their case, plaintiff No.1 himself examined as PW-1. In the chief examination PW-1 has filed

affidavit in lieu of examination-in-chief by reiterating the plaint averments, RTC extract for the year 2014-15 in respect of suit land bearing CB No.136/2A measuring 03 acres 33 guntas situated at Kudagi village is marked as per Ex.P-1, RTC extract for the year 2014-15 in respect of suit land bearing CB No.136/1 measuring 06 acres 08 guntas situated at Kudagi village is marked as per Ex.P-2, certified copies of mutation register extract bearing ME No.5200 and ME No.5293 are marked as per Ex.P-3 and 4.

13. The defendants have not filed any written statement and not opted to cross-examine PW-1. Further defendants have not adduced any evidence. Therefore the oral and documentary evidence of plaintiff remained un-challenged and un-impeached.

14. So far as concerned to the plaint averments, it is for the plaintiffs to establish that, themselves and defendant Nos.1 to 11 constituting joint family members, suit lands are their ancestral joint family properties and they have got 1/5th share each in the suit lands.

15. In order to prove the same, the plaintiff No.1 himself examined as PW-1. In chief examination reiterating the plaint averments. To support of his oral evidence, plaintiffs also produced record of rights and mutation extracts marked as Exs.P-1 to 4. On careful perusal of Ex.P-2, it is well forthcoming that in the record of rights pertaining to the suit land bearing CB No.136/1 measuring 06 acres 08 guntas as per column No.9, the plaintiffs and defendant Nos.1 to 11 names are jointly appears, as per column No.10 their names have been mutated in the record of rights as per "Pouwati Khate". Further as per Exs.P-1 and 3 it appears that, in the record of rights of pertaining to the suit land bearing CB No.136/2A only defendant No.10 name is appears. At this stage, it is pertinent to note that, it is settled position of law that there is always presumptions in favour of joint family, unless and until contrary is established. Here in the case on hand, plaintiffs specifically pleaded that, themselves and defendant Nos.1 to 11 constituting joint family members and suit properties are their ancestral properties. So merely because defendant

No.10's name is only appears in the RTC extract of CB No.136/2A it cannot be said that, the said land is absolute property of defendant No.10 and not ancestral property of plaintiffs and defendant Nos.1 to 11. Further more it is for the defendant No.10 to establish that, the said land is his absolute property purchased out of his own earning but he has not adduced any evidence to that effect. Therefore, merely defendant No.10's name appears in the records does not create any exclusive right on him, as he is being member of joint family. I am of the opinion that, the plaintiffs have successfully established that themselves and defendant Nos.1 to 11 have constituting joint family members, suit properties are ancestral joint family properties.

16. Here in the case, it is pertinent to note that, defendant No.7 appeared before the court, but failed to file written statement. In spite of service of summons, the defendant No.1 to 6 and 8 to 12 have not appeared before the court and not adduced any evidence. So, it is clear that, they are well aware of pendency of the suit. They were at liberty to

file their written statement by opposing claim of the plaintiffs. In spite of having knowledge of pendency of the suit, they have not chosen to contest the case. Under such circumstances, adverse inference need to be drawn against the defendants.

17. Therefore, I have already discussed in above, the plaintiffs have successfully established their case, by adducing oral and documentary evidence and proved that, they are member of joint family suit lands are their ancestral properties. Accordingly, being coparcener and as per Section 6 of Hindu Succession Act, they are entitled to 1/5th share each in the suit lands by metes and bounds. Since the suit land bearing CB No.136/1 is ancestral property and acquired by defendant No.12. If defendant No.1 and 10 received compensation, definitely it will cause in justice to the plaintiffs and other members also. Therefore it is necessary to restraining the defendant No.1 and 10 from receiving compensation amount from the office of defendant No.12. Upon considering the facts and circumstances of the case, I am of the considered view that,

plaintiffs are entitle to the relief of partition and separate possession and and also relief of permanent injunction.

Accordingly, I answer point No.1 in the affirmative.

18. **Point No.2:-** In view of my findings on point No.1, I proceed to pass the following:

O R D E R

Suit of the plaintiffs is hereby decreed.

It is hereby declared that, plaintiffs are entitled to the relief of partition and separate possession of their 1/5th share each in suit lands bearing CB No. 136/2A measuring 03 acres 33 guntas and CB No.136/1 measuring 06 acres 08 guntas both situated at Kudagi village of Basavana-Bagewadi taluka by metes and bounds.

Further the defendant Nos.1 and 12 are are hereby restrained from receiving compensation amount from the office of defendant No.12 pertaining to the suit land

bearing CB No.136/1 of Kudagi village of
Basavana-Bagewadi taluka.

No order as to costs.

Draw preliminary decree accordingly.

(Dictated to the stenographer, transcribed by him, corrected by me, then
pronounced in the open court on this the 23rd day of August 2019)

(Shivaraju H.S.)
Addl. Civil Judge,
Basavana-Bagewadi.

ANNEXURE

WITNESSES EXAMINED FOR THE PLAINTIFFS:

PW-1: Bhimasi S/o Thavaru Lamani @ Pawar

DOCUMENTS MARKED FOR THE PLAINTIFFS:

Ex.P-1: Record of rights of CB.No.136/2A

Ex.P-2: C/c of record of rights of CB.No.136/1

Ex.P-3: C/c of mutation register extract ME No.5200

Ex.P-4: C/c of mutation register extract ME No.5293

**WITNESSES EXAMINED AND DOCUMENTS MARKED
FOR THE DEFENDANTS:**

--NIL--

(Shivaraju H.S.)
Addl. Civil Judge,
Basavana-Bagewadi