

**IN THE COURT OF ADDITIONAL CIVIL JUDGE & JMFC,
AT :INDI**

-PRESENT-

HULUGAPPA D.

B.A., LL.B.

Additional Civil Judge & JMFC, Indi.

Dated this the 21st day of December 2019

Original Suit No.194/2019.

Plaintiff/s:

1. Shruti W/o.Revanasidda Pujari,
Age: 22 years, Occ: HH work,
R/o.Horti, Tq: Indi, Dist: Vijayapura.
2. Kumari. Laxmi D/o.Revanasidda Pujari,
Age: 04 years, Minor Guardian -
plaintiff No.1 – Shruti W/o.Revanasidda Pujari,
Age: 22 years, Occ: HH work,
R/o.Horti, Tq: Indi, Dist: Vijayapura.
3. Kumari. Sannidhi S/o.Revanasidda Pujari,
Age: 02 years, Minor Guardian -
plaintiff No.1 – Shruti W/o.Revanasidda Pujari,
Age: 22 years, Occ: HH work,
R/o.Horti, Tq: Indi, Dist: Vijayapura.

(By Sri.S.K.Rathod, Advocate)

-Versus-

Defendant/s:

1. Revanasidda S/o.Dundappa Pujari,
Age: 35 years, Occ: HH work,
R/o.Horti, Tq: Indi, Dist: Vijayapura.

(Exparte)

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Nature of suit	Partition and separate possession and permanent injunction.		
Date of institution of suit	18.04.2019		
Date of evidence	09.09.2019		
Date of Judgment	21.12.2019		
Total Duration	Years 00	Months 08	Days 03

JUDGMENT

This is a suit filed by the plaintiffs for the relief of partition and separate possession of their legitimate 1/4th share each in the suit property bearing land Sy.No.509/2 measuring 08-acres 30-guntas and also for permanent injunction.

2. The gist of the plaint averments is as follows:

It is averred in the plaint that the plaintiffs and defendant are the members of joint Hindu family. The plaintiff no.1 is the wife and plaintiffs no.2 and 3 are the daughters of the defendant. They are the joint owners and in joint possession of suit land Sy.No.509/2

measuring 08-acres 30-guntas. The plaintiffs have 1/4th share each in the suit property. Originally, the suit property was under ownership of father of defendant i.e. Dundappa Irappa Pujari. In the year 2000, the said Dundappa Pujari had partitioned the suit property in between his sons i.e. Irappa and Revanasidda. In the said partition, the suit property bearing Sy.No.509/2 measuring 08-acres 30-gunta was kept in the name of defendant vide ME No.6401 dated 01.05.2000, which is certified on 02.06.2000. Since from the said date, plaintiffs and defendant are in joint possession and cultivation of the suit land and hence the plaintiffs have got their 1/4th share each in the said land. The defendant had addicted to bad vices and giving mental and physical torture to the plaintiffs. Now, it is very difficult to cultivate the suit land in joint possession. Therefore, on 12.04.2019 the plaintiffs have approached the defendant to allot their 1/4th share each in the suit property. But, the defendant did not heed their request. The defendant is trying to alienate the suit land. Therefore, the plaintiffs have constrained to file this suit.

3. Even after service of summons, the defendant did not appear before the court and hence he was placed *exparte*.

4. In support of the case, the plaintiff no.1 got examined herself as PW.1 and got marked the documents as Ex.P.1 to Ex.P.6 and closed her side.

5. I have perused the materials placed on record and heard the arguments.

6. On the basis of the above pleadings, the following points that arise for my consideration are as under:

POINTS

1. Whether the plaintiffs prove that they themselves and defendant constitute the members of joint Hindu family and the suit property is ancestral and joint family property?
2. Whether the plaintiffs are entitled for 1/4th share in the suit property?
3. Whether the plaintiffs are entitled for the relief as sought for?
4. What order or decree?
7. On meticulous consideration of entire material on

record, I answer above as follows:

Point No.1 : In the affirmative.

Point No.2 : In the affirmative

Point No.3 : In the affirmative.

Point No.4 As per final order, for the following:

REASONS

8. **Points No.1 to 3:-** Since these points are interconnected each other, they have been taken up together for my common discussion to avoid the repetition of facts.

It is the contention of the plaintiffs that plaintiff no.1 is the wife of defendant and minors plaintiffs no.2 and 3 are the children of the plaintiff no.1 and defendant. To substantiate the said contention, the plaintiffs have produced the documents as per Ex.P.3 to Ex.P.6. I have carefully perused the said exhibits. The said exhibits clearly indicate that the plaintiff no.1 is the wife of the defendant and the minor plaintiffs no.2 and 3 are the children of plaintiff no.1 and defendant. Hence, the plaintiffs have established the relationship as contended in the genealogical tree shown in 'A' schedule of the plaint.

9. In order to establish that the suit properties are ancestral and joint family properties, the plaintiff no.1 examined as PW.1. In the examination-in-chief filed by way of affidavit, wherein, the plaintiff averments are reiterated. The P.W.1 has deposed the material facts in her examination-in-chief. It is further deposed by the plaintiff no.1 in her evidence that the defendant is having bad vices and taking disadvantage of his name appeared in the revenue records, he is trying to alienate the suit property to the others with an intention to dupe the legitimate share of the plaintiffs. Further on perusal of the Ex.P.1, the suit property is standing in the name of the defendant. Ex.P.2 reveals that the suit property was fallen to the share of the defendant in the partition held between him and his father and brothers. It is well settled principle of law that there is strong presumption with regard to existence of joint family unless contrary is proved. In the instant case, on perusal of oral and documentary evidence produced by the plaintiffs, it can be held that there exists joint family between plaintiffs and defendant and the

suit property is the ancestral and joint family property of plaintiffs and defendant.

10. Though, a wife not being a co-parcener is entitled to demand partition of Hindu joint family, if there is a partition, she will get a share equal to that of her husband and her children. As the plaintiffs being wife and children of the defendant, they are entitled for 1/4th share each in the suit property. It is worth to note here that even after service of suit summons, the defendant remained absent and placed *exparte*. As it is sufficiently established that the suit property is ancestral and joint family property, the plaintiffs are entitled for their 1/4th share each in the suit property. Since the plaintiffs have proved and established that suit property is ancestral and joint family property, it is just and necessary to restrain the defendant from alienating the suit property till drawing up of final decree. Moreover, in the suit for partition and separate possession, it is necessary to declare the rights of the several parties interested in the property as per Order 20 Rule 18 CPC. Therefore, along with declaring the right of plaintiffs, it is also necessary to declare the

rights of defendant in the suit property in the light of forgoing discussions. Accordingly, I answered **points no.1 to 3 in the affirmative.**

11. **Point No.3:** In view of finding on points No.1 and 2, I proceed to pass the following:

ORDER

The suit of the plaintiffs is hereby decreed.

The plaintiffs are entitled for their 1/4th share each in the suit property.

The defendant is entitled for 1/4th share in the suit property.

The defendant is required to pay necessary court fee on his share.

The defendant is hereby restrained from alienating the suit property by way of permanent injunction till drawing up of final decree.

Under the circumstance of the case, there is no order as to costs.

Draw preliminary decree accordingly.

(Dictated to the stenographer directly on computer, corrected, signed and then pronounced by me in the open court on this 21st day of December, 2019)

(HULUGAPPA D)

Addl. Civil Judge & JMFC, Indi.

Annexure

Witnesses examined for the plaintiffs:

PW.1 Shruti W/o.Revanasidda Pujari.

Witnesses examined for the defendant:

-Nil –

Documents exhibited for the plaintiffs:

Ex.P.1 Extract of RTC of Sy.No.509/2.
Ex.P.2 ME No.6401.
Ex.P.3 Birth Certificate.
Ex.P.4 Birth Certificate.
Ex.P.5 Birth Certificate.

Documents exhibited for the defendant:

- Nil -

(HULUGAPPA D.)

Addl.Civil Judge & JMFC, Indi.