

ORDERS ON MEMO DATED 20/03/2024

The defendants filed memo dated 20/03/2024 and submitted that the plaintiffs be allotted $\frac{1}{2}$ share in the suit schedule properties and the defendants be allotted the remaining $\frac{1}{2}$ share in the suit schedule properties. The counsel for the plaintiffs on 23/07/2024 submitted that he has no objections to allow the said memo.

2. In view of the memo filed as well as the submission made by the counsel for the plaintiffs with regard to the memo, it is now essential to examine whether the prayer as sought for in the memo may be allowed. In this back drop, it is necessary to refer to the plaint averments and the documents placed by the plaintiffs in support of their case.

3. The plaintiffs have filed the present suit for the relief of partition and separate possession. The plaintiffs have claimed $\frac{1}{2}$ share in the suit schedule properties on the premise that the plaintiffs and the defendants are members of Hindu Joint Family governed by Mithakshara School of Hindu Law and the suit schedule properties originally belonged to the grand father of the plaintiff No.1 and the defendant No.1 by name Mudlagirigowda and after the death of the said Mudlagirigowda, the father of the plaintiff No.1 and the defendant No.1 by name Thimmappa inherited the suit schedule properties and the khatha of the suit item No.1 to 15 properties came to be transferred to the name of the above referred Thimmappa. It is further averred that Thimmappa died on 21/07/2020 and his

wife Huchamma died on 25/11/2005. After the death of Thimmappa and Hucchamma referred above, the plaintiff No.1 and the defendant No.1 are having joint right over the suit schedule properties. It is further averred that the khatha of the suit schedule properties are effected in the joint names of the plaintiffs and the defendants.

4. The plaintiffs further averred that the defendant No.1 is the younger brother of the plaintiff No.1 and the defendant No.1 is managing the affairs of the joint family after the death of the parents of the plaintiff No.1 and the defendant No.1 and since the defendant No.1 acted detrimental to the interest of the joint family, the plaintiff No.1 approached the defendants and sought his legitimate $\frac{1}{2}$ share in the suit schedule properties and since the defendants refused the same the plaintiffs were constrained to file the present suit.

5. In support of their case, the plaintiffs furnished 28 documents, which came to be marked from Ex.P-1 to Ex.P-28. Ex.P-1 is the G. Tree Certificate issued by the Deputy Tahasildar, Amruthuru Hobli, Kunigal Taluk, Ex.P-2 is the G.Tree of the family of the plaintiffs and the defendants, Ex.P-3 and 4 are the death certificates of Thimmappa and Hucchamma, parents of the plaintiff No.1 and the defendant No.1, Ex.P-5 to Ex.P-17 and Ex.P-28 are the RTC Extracts pertaining to the suit schedule immovable properties, while Ex.P-26 is the Demand Register Extract pertaining to suit item No.13 property. Ex.P-18 to 20

are the MR Extracts pertaining to the suit schedule properties, Ex.P-27 is the Legal Notice dated 25/04/2022 issued by the plaintiffs to the defendants calling upon the defendants to allot the plaintiffs their legitimate share in the suit schedule properties, Ex.P-22 and Ex.P-23 are the Postal Receipts, while Ex.P-24 and Ex.P-25 are the Postal Acknowledgments.

6. A perusal of the documents produced by the plaintiffs would show that the plaintiff No.1 and defendant No.1 are brothers and sons of Thimmappa and Hucchamma, who died on 21/07/2020 and 25/11/2005 respectively, leaving behind the plaintiff No.1 and the defendant No.1 as their only legal representatives. It also appears that the khatha of the suit schedule item Nos.1 to 12, 14 and 15 stand in the joint names of the plaintiffs and the defendants while the khatha of item No.13 of the suit schedule property stands in the name of the father of the plaintiff No.1 and the defendant No.1 by name Mudlagiri Thimmappa. The MR extracts also disclose that the khatha of the suit items 1 to 12, 14 and 15 were made in the joint names of the plaintiffs from the name of the father of the plaintiff No.1 and the defendant No.1 by name Thimmappa S/o. Mudlagiriyappa and the defendants and plaintiffs are in joint possession and enjoyment of the suit schedule properties.

7. A careful perusal of the above documents clearly discloses that the suit schedule properties originally stood in the name of the father of the plaintiff No.1 and the defendant No.1 and the said properties

now stand in the joint names of the plaintiffs and the defendants and the plaintiffs and the defendants are in joint possession and enjoyment of the same and there is no partition of the said properties between them inter-se till date.

8. In view of the nature of the suit schedule properties being determined to be joint family properties of the plaintiffs and the defendants by virtue of the above discussion and also the memo dated 20/03/2024 filed by the defendants admitting the contentions of the plaintiffs, this court sees no impediment to draw preliminary decree in terms of the memo, particularly in the light of the provision contained U/o.12 Rule 6 of CPC which says that when ever there is an admission of facts either in the pleadings or otherwise, the court at any stage of the suit as it may think fit having regard to the such admissions. In view of the above provision, the memo filed by the defendants herein being in the nature of admission of the claim of the plaintiffs, this court sees no impediment to decree the suit of the plaintiffs as prayed for by the plaintiffs and the defendants. Further, though the plaintiff No.2 and the defendant No.2 are shown as joint khathedaars of the suit schedule properties along with the plaintiff No.1 and defendant No.1 respectively, since they have no right over the said properties during life time of the plaintiff No.1 and defendant No.1 respectively, this court is of the opinion that the plaintiff No.2 and the defendant No.2 are not entitled for any share in the suit schedule properties during the lifetime of the plaintiff No.1 and the defendant No.1 respectively. Under the

circumstances, this court is of the opinion that only the plaintiff No.1 and the defendant No.1 are entitled for a share in the suit schedule properties and plaintiff No.2 and defendant No.2 cannot be allotted any share in the same. Accordingly, this court proceeds to pass the following;

ORDER

The memo filed by the defendants dated 20/03/2024 is allowed.

No order as to costs.

The plaintiff No.1 is entitled for $\frac{1}{2}$ share in the suit schedule properties while the defendant No.1 is entitled for the remaining $\frac{1}{2}$ share in the suit schedule properties.

Office is further directed to register the final decree proceedings and list the matter for taking steps under Order XX Rule 18 of CPC in terms of the judgment of the Hon'ble Apex Court in Kattukandi Edalathi Krishan and Another Vs. Kattukandi Edalathi Valsan and Others., dated 13.06.2022 by 15.10.2024.

**Senior Civil Judge & JMFC
Kunigal.**