

**IN THE COURT OF THE SENIOR CIVIL JUDGE & J.M.F.C.,
AT NELAMANGALA.**

Dated this the 17th day of July 2013

Present

Smt B.S.Rekha, B.A. (Law) LL.B.,
Senior Civil Judge & JMFC.,
Nelamangala

O.S.No. 9/2010

Between:-

1. Smt Parvathamma W/o. late Chikkavenkatappa, aged about 62 years, R/at. Nelamangala Village, Kasaba Hobli, Nelamangala Taluk, Bangalore Rural District.
2. Sri Shivakumar
Since dead by his LRs
- 2(a). Smt Jayamma W/o. late Shivakumar.
- 2(b). Sri Venkatesha S/o. late Shivakumar, aged about 22 years.
- 2©. Asha D/o. late Shivakumar, aged about 20 years.
- 2(d). Sri Hanumantha S/o. late Shivakumar, aged about 19 years.

All are R/at. Jakkasandra Village,
Kasaba Hobli, Nelamangala Taluk,
Bangalore Rural District.

3. Smt Manjamma D/o. late Chikkavenkatappa, aged about 35 years.
4. Smt Nagarathna D/o. late Chikkavenkatappa, aged about 24 years.
5. Smt Kathyani D/o. late Chikkavenkatappa, aged about 24 years.
6. Sri Srinivasa S/o. late Chikkavenkatappa, aged about 22 years.
7. Sri Govindaraju S/o. late Chikkavenkatappa, aged about 20 years.
8. Smt Girija D/o late Chikkavenkatappa, aged about 18 years.

Plaintiffs' No.2 to 8 are R/at. No.251, Near Lakshmi Indian Gas, Nayanadahalli Post, Mysore Road, Bangalore – 560 039.

.....Plaintiffs

(By Sri B.Gangaraj, Advocate)

And:-

1. Sri C.Krishna S/o. late Chikkavenkatappa, aged about 35 years, R/at. Nelamangala Town,

Kasaba Hobli, Nelamangala Taluk,
Bangalore District.

.....Defendant

(Defendant placed exparte)

Date of Institution of the suit	26.12.2009		
Nature of the Suit	Partition		
Date of commencement of recording of Evidence	07.08.2012		
Date of Pronouncement of Judgement	17.07.2013		
Duration	Day/s	Month/s	Year/s
	21	06	03

JUDGEMENT

1. The plaintiffs have filed the suit against the defendants for the relief of partition and separate possession.
2. The brief facts of the plaintiffs' case is that, one Chikkavenkatappa had two wives by name Chikkahanumakka and Parvathamma. The 1st plaintiff is the 2nd wife of late Chikkavenkatappa and the plaintiffs No.2 to 8 are the sons and daughters and the defendant is the 1st wife's son. Chikkavenkatappa died on 21.01.2001 leaving behind the plaintiffs and the defendant as legal heirs. The plaintiffs' father and his brother acquired the schedule property in Sy.No.29 measuring 2 acres 28 guntas through occupancy right. After obtaining the occupancy rights, elder uncle of the plaintiffs Thimma

had denied to give the share to plaintiffs' father. The plaintiffs' father had filed a suit in O.S.No.224/1988, which was decreed by allotting half share of the plaintiffs' father. Then Thimma has preferred R.A. which was allowed in his favour. Thereafter, the plaintiffs' father preferred RSA.No.311/1997, which was allowed. Thereafter, inspite of confirmation of Judgement and Decree, Thimma failed to give share to the plaintiffs' father by refixing the boundary and he alone enjoyed the property. After the death of Chikkavenkatappa, the defendant preferred Final Decree Proceedings against that Thimmaiah and purchaser N.R.Vishwanath in FDP.No.45/2001 without making the plaintiffs as parties. During the pendency of the FDP proceedings, the plaintiffs have filed an application which was dismissed by directing "that they are the 2nd wife and children late Chikkavenkatappa by initiating a separate judicial proceedings". Thereafter, the commissioner was appointed and share of the plaintiffs' father was allotted in that FDP which is the suit schedule property. From the date of Final Order, the plaintiffs and defendant are in joint possession and enjoyment of the schedule property. The defendant has managing the property as Kartha and later he acting detrimental to the

interest of the plaintiffs. The plaintiffs have convened several Panchayath in the village. Hence, this suit is filed.

3. In the evidence of PW-1, who is the plaintiff No.1 in this case had stated on par with plaint averments. She relied upon Ex.P1 to Ex.P7. Ex.P1 is the Genealogical Tree, Ex.P2 to Ex.P4 are the Electoral ID cards, Ex.P5 is the Ration card. Ex.P6 is the S.S.L.C. Marks card of Girija, Ex.P7 is the RTC extract.
4. In this case, the contention of the plaintiffs is that, they are the children and the 2nd wife of Chikkavenkatappa, who died on 21.01.2001. These plaintiffs claim that they are the legal representatives of Chikkavenkatappa. The plaintiffs have stated about the previous suit between Chikkavenkatappa and his brother Thimma in O.S.No.224/1988 for partition and separate possession, which was decreed. The appeal preferred by Thimmaiah was allowed. Thereafter, Chikkavenkatappa preferred R.S.A.No.311/1997, which was allowed and the Judgement and Decree in O.S.No.224/1988 was restored. It is alleged that inspite of the passing the decree Thimmaiah had not allowed these plaintiffs to enjoy the fruits of the decree. Thereafter, the defendant had preferred Final Decree Proceedings wherein these

plaintiffs have implead and they were arrayed as parties. In this case this property was allotted to them. Now this suit is filed for legitimate share in the property.

5. In this case the oral and documentary evidence on record clearly establish the entitlement of share of the plaintiffs. There is no resistance on behalf of the defendant. Hence, I answer this point in the affirmative and pass the following;

ORDER

Suit is decreed with costs.

The plaintiffs' branch is entitled for 1/2 share in the suit schedule property by metes and bounds.

There will be separate enquiry regarding mesne profit.

Draw preliminary decree accordingly.

(Dictated to the Stenographer, transcribed and computerized by her, corrected and then pronounced by me in open court on this the 17th day of July 2013)

(Smt. B.S.Rekha)
Senior Civil Judge & JMFC.,
Nelamangala

ANNEXURE

No. of Witness examined on behalf of the Plaintiff/s

1. PW-1 - Smt. Parvathamma

No. of Exhibits marked on behalf of the Plaintiff/s

- | | | |
|----|-------------|-------------------------------|
| 1. | Ex.P1 | Genealogical tree |
| 2. | Ex.P2 to P4 | Electoral ID Cards |
| 3. | Ex.P5 | Ration card |
| 4. | Ex.P6 | S.S.L.C. Marks card of Girija |
| 5. | Ex.P7 | RTC extracts |

No. of Witness examined on behalf of the Defendant/s

Nil

No. of Exhibits marked on behalf of the Defendant/s

Nil

(Smt. B.S.Rekha)
Senior Civil Judge & JMFC.,
Nelamangala

(Judgement Pronounced in the Open Court, vide separate
Judgement)

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(Smt. B.S.Rekha)
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