

KAGD410019252019



**IN THE COURT OF THE ADDITIONAL CIVIL
JUDGE AND J.M.F.C. AT RON**

**Present : Sri ADITYA R. KALAL B.A.L., LL.M (Symbiosis)
Addl. Civil Judge & J.M.F.C , Ron.**

Dated this the 25th day of March, 2023

O.S. No.199/2019

PLAINTIFFS :

- 1. MANGALA**
W/o Narayanamurthy Bhajantri,
Age:45 years, Occ:Household
R/o Mallapura village
Tq: Ron, Dist: Gadag.
- 2. SUNIL**
S/o Narayanamurthy Bhajantri,
Age:26 years, Occ:Education,
R/o Mallapura village
Tq: Ron, Dist: Gadag.
- 3. SUNEETA**
D/o Narayanamurthy Bhajantri,
Age:21 years, Occ:Education,
R/o Mallapura village
Tq: Ron, Dist: Gadag.

4. **SUDEEP**

S/o Narayanamurthy Bhajantri,
Age:17 years, Occ:Education,
R/o Mallapura village
Tq: Ron, Dist: Gadag.

(Represented by : Sri Y.D. Nadaf, Advocate)

Versus

DEFENDANTS :

1. **NARAYANAMURTHY**

Adopted son of Doddabommappa Bhajantri,
Age:55 years,
Occ:Employee
R/o Mallapura village, Tq:Ron, Dist:Gadag.

2. **SHOBHA**

W/o Rudrappa Bhajantri,
Age:39 years, Occ:Agriculturist,
R/o Near Venkoba Temple, Bhajantri Oni,
Naragund, Tq:Naragund, Dist:Gadag.

(Placed Ex-parte)

Date of institution of the suit	:	20/07/2019
Nature of the suit	:	Partition and Separate Possession and injunction
Date of commencement of recording of evidence	:	05/03/2022
Date of closing of evidence	:	07/09/2022
Date of judgment	:	25/03/2023
Total Duration	:	Years Months Days 03 08 05

(Aditya R. Kalal)
ACJ & JMFC, Ron.

J U D G M E N T

1. The plaintiffs, who are the wife and children of defendants No.1 Narayanamurthy have filed this suit seeking the relief of partition.

2. It is the case of the plaintiffs that the suit property bearing R.S.No.69/1A measuring 4 acres 15 guntas situated at Mallapura village Ron Taluk is the ancestral property of the defendant No.1 and the defendant No.2 is said to be the purchaser of 11 guntas out of said property. It is further stated that there has been no partition by metes and bounds between the plaintiffs No.1 to 4 and the defendant No.1. It is also stated that the defendant No. 1 with an intention to defeat the rights of the plaintiffs has entered into an agreement with respect to 11 guntas in the said property and has written an agreement to sell in favour of the defendant No.2 and the same has been registered before the Sub-Registrar, Ron. When the plaintiffs came to know about this, they have objected to the defendant No.2 as to why she was constructing a building in the suit property. Then, they have come to know that the defendant No.1 has sold the suit property to the defendant No.2.

3. After service of suit summons, the defendant No.1 has not appeared even though summons was served upon him and he has been placed *exparte*. Steps has not been taken against the defendant No.2. Therefore, the suit against the defendant No.2 has been dismissed on 23/01/2021 and the case was posted for plaintiffs' evidence.

4. As the defendants have been placed *exparte*, the suit of the plaintiff has been remained uncontested.

5. After perusal of the plaint as well as the documents, which have been placed before the Court, the following points arise for consideration of this Court :

POINTS

- 1. Whether the plaintiffs prove that they and the defendant No.1 constitute a Hindu Undivided Joint Family and that the suit property is their undivided ancestral property?*

2. Whether the plaintiff is entitled for the relief of injunction ?

3. What order or decree?

6. After going carefully through the evidence and the documents placed on record, I answer the above points as hereunder :

Point No. 1 : In the negative;

Point No. 2 : In the negative;

Point No. 3 : As per the final order for the following :

REASONS

POINTS NO. 1 and 2: -

7. As these points are inter-related to each other intrinsically and therefore they are taken up for common discussion to avoid repetition of facts.

8. The case of the plaintiffs is that the suit property is the ancestral property of the plaintiffs and the defendant No.1.

The defendant No.1 and the plaintiff No.1 are husband and wife and they have three children i.e., plaintiffs No.2 to 4. It is further case of the plaintiffs that the suit property is the ancestral property and it has not been divided by metes and bounds and that the plaintiffs have 4/5th share each in the suit property. It is further stated by the plaintiffs that the defendant No.1 has entered into an agreement to sell 11 guntas out of the suit property and in pursuance of the same, the defendant No.2 is constructing a building in the said property.

9. The case of the plaintiffs is that the defendant No.2 does not have any right to make any construction in the suit property without there being any partition by metes and bounds.

10. It is seen that the suit property is measuring 4 acres 15 guntas and the plaintiffs No.1 to 4 are together claiming 4/5 th share each in the suit property and therefore, 1/5th share would be 35 guntas each to the plaintiffs No.1 to 4 and the defendant No.1.

11. In order to prove their case, the plaintiff No.1 Mangala Bhajantri has been examined as P.W.1 and she has filed her affidavit in lieu of her examination-in-chief and she has iterated the contents of her plaint. She has also produced RTC extract with respect to the property bearing R.S.No.69/1A measuring 4 acres 15 guntas situated at Mallapura village, Ron Taluk which shows that 4 acre 15 guntas is standing in the name of defendant No.1 Narayanamurthy Bhajantri and the same has been effected as per Katha No.129 as per M.R.No.81/2007-08 dated 04/09/2007. The same is continued till the year 2019-20. The P.W.1 has not been cross-examined as the defendants are placed exparte. Except the RTC extract, the plaintiffs have not produced any documents to show that the suit property is the ancestral property.

12. In order to show that the property is the ancestral property, the plaintiffs have to show that it has been carried out by the last four generations. The plaintiffs should be the fourth generation occupiers of the property. It is also seen that the case against the defendant No.2 purchaser has been dismissed for not taking proper steps by the plaintiffs advocate. The same was also brought to the knowledge of the counsel for the

plaintiffs. But, he has not made efforts to take any steps as against the defendant No. 2. The plaintiff has also not produced the certified copy of any agreement to sell, as stated by the plaintiffs in their plaint. The assertion has not been supported by way of evidence.

13. As the suit property is measuring 4 acres 15 guntas which is equal to 175 guntas and the plaintiffs No.1 to 4 are claiming 1/5th share each, their each share would be 35 guntas. In the same way, the defendant No.1 would also be entitled for 35 guntas in the suit property. Here, the defendant No.1 is said to have sold 11 guntas out of the suit property to the defendant No.2 by way of an agreement. Mere agreement would not transfer title and it is for the defendant No. 2 who is taking the risk of purchasing the property. The plaintiffs have also not made any steps to produce the said agreement before the Court. The conduct of the plaintiffs show that they have casually made this suit, without taking any efforts to produce proper evidence before the court.

14. By way of preponderance of probability, when the entire case of the plaintiffs is seen , it shows that the plaintiffs

have failed to show before the court that the suit property is the ancestral property. Even otherwise, the defendant No. 1 , who is the father of the plaintiffs, is entitled for 35 guntas in the suit property. Therefore if he has sold 11 guntas, then the same may be adjusted in his share. Therefore the plaintiffs have not made out a prima facie case to grant injunction against the defendant No. 2 to restrain her from making any construction in the suit property. The plaintiffs have also not pleaded that the suit property is the only property which is available to them. They have not included any other properties in this suit. Therefore considering the facts and circumstances of this case, I am of the considered opinion that the plaintiffs have failed to prove that the suit property is their ancestral joint family property. The addresses of the plaintiffs and the defendant No. 1 shows that they are all residing under one roof. Therefore it is seen that the suit is also collusive suit. The plaintiffs have also not made out grounds for the grant of injunction. Therefore for these reasons, I answer the above **points No. 1 and 2 in the negative.**

POINT No.3

12. In view of findings on point No.1 and 2 , I proceed to pass the following :

ORDER

***The suit of the plaintiffs is
dismissed with costs.***

Draw decree accordingly.

(Dictated to the Stenographer, transcribed by him, corrected by me and then pronounced in the Open Court on this the 25th day of March, 2023)

(ADITYA R. KALAL)

Addl. Civil Judge & JMFC, Ron.

ANNEXURE

1. **Witnesses examined on behalf of the Plaintiffs:**

PW-1 : Mangala N.Bhajantri

2. **Documents exhibited on behalf of the Plaintiffs:**

Ex.P-1 : Property Extract

3. **Witnesses examined on behalf of the Defendants:**

- NIL -

4. **Documents exhibited on behalf of the Defendants:**

- NIL -

(ADITYA R. KALAL)

Addl. Civil Judge & JMFC, Ron.