

IN THE COURT OF THE CIVIL JUDGE (SR.DVN.) AND
JMFC., ANEKAL.

Present: Sri. Mahanthappa, B.A., LLB.,
Civil Judge (Sr.Dn.) & JMFC., Anekal.
O.S.NO.854/ 2006

(Old O.S.No.985/2004

Dated this the 5th day of December, 2008.

Plaintiffs.

1. Smt.Munilakshamma,
Aged about 38 years,
D/o Late Halumariyappa,
W/o Sri K.S.Srinivasa Murthy,
Residing at Venkateshpura,
Near Srirama Temple Road,
R.V.College Post, Bangalore -560 045
2. Smt.Munirathnamma,
Aged about 36 years,
D/o Late Halumariyappa,
W/o Sri Rudrappa,
Residing at Kithaganahalli Village,
Bommasandra Post, Hosur Main Road,
Bangalore Urban District.
3. Smt.Kempamma, Aged 34 years,
D/o Late Halumariyappa,
W/o Sri Ashwathappa,
Residing at Seerathimmanahatti Village,
Thali Block, Denkanikota Taluk,
Dharmapuri District, Tamilnadu.

4. Smt.Parvathi, aged 29 years,
D/o Late Halumariyappa,
W/o Sri Shivanna @ Shivu,
Residing at Old Chandapura Village,
Atthibele Hobli, Hosur Main Road,
Anekal Taluk, Bangalore Urban District.

5. Smt.Shanthi, aged 26 years,
D/o Late Halumariyappa,
W/o Sri Manjunatha,
Residing at Old Chandapura Village,
Atthibele Hobli, Hosur Main Road,
Anekal Taluk, Bangalore Urban District.

6. Smt.Lakshmi, aged 23 years,
D/o Late Halumariyappa,
W/o Sri Muniyappa,
Residing at S.Kurupatti Village,
Surakapalli Post, Denkanikota Taluk,
Dharmapuri District, Tamil Nadu.

7. Smt.Geetha, aged 20 years,
D/o Late Halumariyappa,
W/o Sri Raju, residing at S.Kurupatti
Village, Sarakapalli Post, Denkanikota
Taluk, Dharmapuri District,
Tamil Nadu.

(By Sri K.V. Advocate)

//VS//

Defendants:- 1.Sri M.Sampath Kumar,

0.5.16.154/16
Aged about 32 years,
S/o Late Halumariyappa,
Residing at Old Chandapura Village,
Atthibele Hobli, Hosur Main Road,
Anekal Taluk, Bangalore Urban District.
2) Sri A Venkataramana,
Aged about 43 years,
S/o Sri Visweswara Rao,
Residing at Nerni,
Atthibele Hobli, Hosur Main Road,
Anekal Taluk, Bangalore Urban District.

Aged about 32 years,
S/o Late Halumariyappa,
Residing at Old Chandapura Village,
Atthibele Hobli, Hosur Main Road,
Anekal Taluk, Bangalore Urban District.

2) Sri A.Venkataramana,
Aged about 43 years,
S/o Sri Visweswara Rao,
Residing at Neralur Village,
Athibele Hobli, Anekal Taluk,
Bangalore Urban District.
(Defendants placed exparte)

Date of Institution of the Suit : 26/08/2004

Nature of Suit : Partition.

Date of Commencement of

Recording evidence : 22/12/2006

Date on which Judgment was

Pronounced : 05-12-2008

Total Duration : Year/s Month/s Day/s

04 03 09

(Mahanthappa, A.D.)

CIVIL JUDGE (SR.DN.) & JMFC, ANEKAL

JUDGMENT

The plaintiffs have filed this suit against the defendants for partition and separate possession of their legitimate $1/8^{\text{th}}$ share each in the suit schedule properties, and to declare that the sale of the schedule properties in favour of defendant no.2 by registered sale deed dated 24/8/1995 in respect of the schedule properties is illegal and not binding on the plaintiffs' legitimate $1/8^{\text{th}}$ share each in the schedule properties, and for permanent injunction.

2. The brief facts of the case of the plaintiffs are as under:-

The plaintiffs and defendant nos.1 are the sister and brother and they are the children of Late Mariyappa @ Halumariyappa. The plaintiffs are all married. The father of the plaintiffs and defendant no.1 viz., Mariyappa @ Halumariyappa inherited certain ancestral properties from his father under the partition deed effected among his brothers. The lands bearing Survey Nos.60/1A measuring 01 acre 07 guntas and Sy.No.61/1 measuring 34 guntas

situated at Chandapura Village, Anekal Town are also among the properties which had fallen to the share of the plaintiffs father. The said two items of the lands are the subject matter of this suit. The plaintiffs and defendant constitute members of undivided Hindu joint family. The plaintiffs are coparceners along with the defendant and they are in joint possession and enjoyment of the schedule properties. There is no partition effected so far in the joint family among the plaintiffs and defendant. The defendant has started acting detriment to the rights, share and interest of the plaintiffs in the schedule properties and also family affairs. The plaintiffs have been continuously demanding for partition and separate possession of their respective share in the schedule properties. Though initially the defendant agreed to effect partition and give share to the plaintiff, he went on postponing the same and of late he has turned hostile and refused to effect partition or to give any share to the plaintiff in the schedule properties.

3. In the second week of June-2004 the defendant made attempts to trespass and interfere with the schedule properties. The plaintiffs enquired the defendant regarding his right to interfere with the schedule properties. He revealed that he has purchased the schedule property from their father and also the defendant no.2 under registered sale deed dated 24/8/1995 and also got the khatha and mutation transferred into his name. The plaintiffs appraised the facts to the defendant no.2 that the schedule properties are their ancestral properties and their father and defendant no.1 had no independent right or ownership over the schedule properties to sell the same to the defendant no.2 ignoring the legitimate right and share of the plaintiffs. Even to this day the schedule properties are in joint possession and enjoyment of the plaintiffs and defendant no.1. The plaintiffs father Late Mariyappa @ Halumariyappa and the defendant no.1 had no right, title or interest over the schedule properties to alienate in favour of defendant no.2. The said sale was not for legal necessities or for family necessities. Hence, this suit.

4. After the institution of the suit, the defendant nos. 1 and 2 remained absent. Hence, they have placed experts. The case was posted for plaintiffs evidence. According to the support of the case of the plaintiffs themselves examined as P.W.1 and also examined and closed their evidence.

5. Heard and

4. After the institution of the suit, the defendant nos. 1 and 2 remained absent. Hence, they have placed ex parte. The case was posted for plaintiffs' evidence. Accordingly In support of the case of the plaintiffs, the plaintiff no.4 herself examined as P.W.1 and also got marked Ex.P.1 to P.8 and closed their evidence.

5. Heard arguments.

6. The following points that arise for my consideration are as under:-

(1) Whether the plaintiffs prove that the suit schedule properties are the ancestral and joint family properties of themselves and defendant no.1?

(2) Whether the plaintiffs prove that the sale deed executed by the father of the plaintiffs and defendant no.1 in favour of defendant no.2 is not binding on their

legitimate $1/8^{\text{th}}$ share each in the
schedule properties?

(3) Whether the plaintiffs is entitled
permanent injunction?

(4) What order or decree?

7. My answer to the above points are as under:-

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. Point Nos.1 and 2:- In order to avoid repetition of facts and reasonings, these two points are taken together for consideration.

9. P.W.1 has deposed that one Mariyappa @ Halumariyappa who is none other than the father of the plaintiffs and defendant no.1 has inherited certain ancestral properties

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in his father under the partition deed effected among brothers. The suit schedule properties were fallen to the share of the plaintiffs' father. Since the said properties are inherited by the plaintiffs father, they are the ancestral and joint family properties to the plaintiffs and defendant no.1. She has further stated that plaintiffs and defendant no.1 have constituted members of undivided Hindu joint family and they are also coparceners along with the defendant and they are in joint possession and enjoyment of the schedule properties. There is no partition effected so far in the joint family among the plaintiffs and defendants. In the second week of June-2004, the defendant no.2 made attempts to trespass and interfere with the schedule properties. The plaintiffs have made an enquiry regarding his interference, he said that he has purchased the schedule properties from their father and the first defendant. In support of their case, the plaintiffs have produced Ex.P.1 genealogical tree to prove the relationship with the first defendant. They have also produced Six RTC extracts which are marked at Ex.P.2 to P.7. These RTC extracts showing the name of

A.Venkataramana, the defendant no.2. Ex.P.6 and P.7 are certified copies of sale deeds. Ex.P.8 and P.9 are Encumbrance Certificates. On going through the evidence coupled with the documents produced by the plaintiffs, it is very clear that the suit schedule property is inherited by the father of the plaintiffs and defendant no.1 through his father. The properties inherited by the father is ancestral property, hence all the coparceners have got equal share in the said properties. The oral and documentary evidence of the plaintiffs remained unchallenged. Therefore, in the absence of any rebuttable evidence by the defendants, the plaintiffs evidence must be accepted. Hence, I answered Point Nos.1 to 3 in the Affirmative.

10. Point No.4:- In view of my answers to Point Nos.1 to 3 in the affirmative, I proceed to pass the following:-

ORDER

The suit of the plaintiffs is hereby decreed with costs.

It is declared that the plaintiffs are entitled for their legitimate $1/8^{\text{th}}$ share each in the suit schedule properties.

It is further declared that the sale deed executed in favour of defendant no.2 by registered sale deed dated 24/8/995 bearing document No.3038 and 3039/95-96 in the Office of the Sub Registrar, Anekal is not binding to the extent of plaintiffs' $1/8^{\text{th}}$ share each of the suit schedule properties.

The defendant no.2, his agents, power of attorney holders and anybody acting on his behalf are restrained from alienating, transferring or encumbering the schedule properties in favour of anybody in respect of undivided $1/8^{\text{th}}$ share each of the plaintiffs or otherwise disturbing their joint possession of the schedule properties in any manner.

Since the plaint schedule properties agricultural revenue lands, the partition of the same made as per the provisions of Section-54 of CPC.

Draw preliminary decree accordingly.

(Dictated to Stenographer, transcribed and typed by him, corrected by me and pronounced in the open court on 5th Day of December, 2008).

Mahantappa
(Mahantappa, A.D.)
Civil Judge (Sr.Dn.) & JMFC., Anekal.

ANNEXURE

WITNESSES EXAMINED FOR THE PLAINTIFF

1. PW-1 Parvathamma.

DOCUMENTS EXHIBITED FOR PLAINTIFF

1. Ex.P.1. Genealogical tree.
2. Ex.P.2 to 5. Four Pahanis.
3. Ex.P.6 & 7. Certified copies of the sale deeds.
4. Ex.P.8. Xerox copies of Encumbrance Certificates.

Mahantappa

WITNESS EXAMINED FOR DEFENDANTS:- Nil.

DOCUMENTS EXHIBITED FOR DEFENDANTS:- Nil.

Mahantappa A.D.
(Mahantappa A.D.)
CIVIL JUDGE (SR.DN.) & J.M.F.C., Anekal.