

KARC400010872018



Presented on : 18-06-2018

Registered on : 19-06-2018

Decided on : 08-07-2022

Duration : 04 years, 00 months, 20 days

IN THE COURT OF THE CIVIL JUDGE AND JMFC, MANVI

Present:- Sri. Ashappa,
B.com. LLM,
Civil Judge and J.M.F.C., MANVI.

O.S.NO. 57/2018

Dated : 8th day of July -2022

- Plaintiffs :**
1. Hanumanthappa S/o Malleshappa,
aged:45 years, Occ: Agri, R/o: Kallur,
Tq: Manvi, Dist: Raichur.
 2. Smt. Mallamma W/o Sukhamuni ,
aged:38 years, Occ: Agri, R/o:Kallur,
Tq: Manvi, Dist: Raichur.

(By Sri S.S.K, Advocate)

// VERSUS //

Defendants :

1. Smt.Gouramma W/o Ganapathi,
Age: 60 years, Occ: Agri., R/o:Kallur,
Tq: Manvi, Dist: Raichur.
2. Sri Maruthi S/o Late Ganapathi,
Age: 40 years, Occ: Agri., R/o:Kallur,
Tq:Manvi, Dist: Raichur.

3. Smt.Kamalamma W/o Late
Shankrappa, Age: 38 years, Occ: Agri.,
R/o:Kallur, Tq: Manvi, Dist: Raichur.
4. Sri Basavaraj S/o Ganapathi,
Age: 35 years, Occ: Agri., R/o:Kallur,
Tq: Manvi, Dist: Raichur.

(By Sri A.N.R Advocate)

//J U D G M E N T//

The plaintiffs herein have filed the present suit against the defendants seeking the relief of partition and separate possession in the suit schedule properties.

: SUIT SCHEDULE PROPERTIES :

Land Sy.No.966/*/* measuring 7 acres 24
guntas of Kallur-2 village, Tq: Manvi Dist:
Raichur.

2. Brief facts of plaintiffs case are as under:

It is stated one Basappa Waddar and his wife Yankamma having three sons namely Malleshappa, Ganapathi and Shree Shivaram Swamiji @ Shree Paramahansa Shivaramiji. The said Basappa and Yankamma were dead. The Malleshappa having three sons Plaintiff No. 1 and one Sukhamuni. The said Malleshappa and Sukhamuni dead. The plaintiff No. 1 is son of

said Malleshappa and plaintiff No. 2 is wife of said Sukhamuni. Second son Ganapathi also dead. His wife defendant No. 1 and three sons Maruthi defendant No.2, Shankrappa and Basavaraju defendant No.4. Shankrappa died his wife defendant No.3.

3. It is stated that the plaintiffs and defendants are Hindu joint family members and the suit land standing in the name of Shree Paramahansa Shivaramiji. He died on 03.10.2017 without any issues. After his death the plaintiffs and defendants jointly cultivating the suit land and they are joint in possession. The plaintiffs and defendants are having equal share in the suit land. The plaintiffs are requested the defendants to effect partition in the suit land and give their half share but the defendants not ready to effect the partition and therefore cause of action arise to the plaintiff to file present suit. On these grounds the plaintiff sought to decree the suit.

4. In pursuance issue summons to the defendants, defendants appeared through Sri A.N.R Advocate but inspite of sufficient time granted not filed written statement.

5. The matter has been posted for evidence. Plaintiffs themselves stepped into witness box and examined as PW.1 and 2. In support of their case one of the witness examined as Pw.3. Further they filed documents got marked as Ex.P.1 to Ex.P.5 and closed the side. The details are given in the annexure.

6. Heard the arguments of learned counsel for plaintiff.

7. On the basis of above pleadings, the following points arose for consideration:

- 1. Whether the plaintiffs prove that, the Suit Schedule Property is joint family property of themselves and defendants and they are joint undivided family members?**
- 2. Whether the plaintiffs are entitle half share in the Suit Schedule Property as sought?**
- 3. What order or decree?**

8. Heard argument of learned counsel for plaintiff.

9. My findings on the above points are:

- 1. Point No.1** : In the Affirmative
- 2. Point No.2** : In the Affirmative
- 3. Point No.2** : As per final order for the following:

::REASONS::

10. POINT NO.1: In order to prove the case, the plaintiffs themselves examined as PW.1 and 2. In their examination-in-chief filed in lieu of affidavit has reiterated the contents of plaintiff paragraphs. Further in support of their case one independent witness has been examined as Pw.3. Pw.3 also stated in his evidence that the suit property cultivating by the plaintiffs and defendants and it was standing in the name of Shree Shivaramaswamy. He deposed the said Shree Shivaram swamy died without any issues. The plaintiffs and defendants are heirs. After his death the plaintiffs and defendants are having equal share. He deposed the defendants refused to effect the partition and give the share of plaintiffs in the suit land and therefore plaintiffs constrained to file the present suit. In support of oral evidence of the case of plaintiffs, they filed 5 documents marked as Ex.P.1 to 5. I have perused the documents marked by the plaintiffs. Ex.P1, Ex.2 and 4 are the RTC's of suit land Sy.No.966/*/* measuring 10 acres 06 guntas to the extent of 7 acres 24 guntas standing in the name of Shree Paramahansa Shivaramiju swamy S/o Basappa and to the extent of 2 acres 11 guntas in the name of Ganapathi S/o

Basappa. Ex.P.3 is the Endorsement, Ex.P.5 is the copy of mutation. The plaintiff not asked in the extent of 2 acres 11 guntas standing in the name of Ganapathi. The Ex.P.1 to 4 and oral evidence of PW.1 to 3 are in consonance with plaintiff averments. The documents are very much clear that the said Paramahansa Shivaramiji died leaving behind the suit land without any issues. The plaintiffs and defendants are the Class-II heirs of said Paramahansa Shivaramiji. It means after his death the property is to be devolve in between heirs of Malleshappa and Ganapathi equally. The plaintiffs being the heirs of Malleshappa and the defendants being heirs of Ganapathi are entitle equal share. The defendants no any exclusive rights over suit land. Moreover the oral evidence of PW.1 as well as documentary evidence produced by the plaintiffs are remains unchallenged and un-controverted by the defendants. There are no any material oral or documentary evidence to discard or to disbelieve the claim of the plaintiffs. The evidence adduced by the plaintiffs are crystal clear that, the suit property joint family property in between themselves and defendants. The defendants have no exclusive rights over suit land nor they produced any material to show their

exclusive title over suit land. Therefore without much discussion I hold that the suit property joint family property and parties to the suit are joint in possession. **Hence, I answered point No.1 in the affirmative.**

11. POINT NO.2. There is no dispute that, the plaintiffs are heirs of Malleshappa and defendants are heirs of Ganapahti. It is also not in dispute that Shree Shivaram swamy died without any issues. After his death the property devolve in between heirs of Malleshappa and heirs of Ganapahti and therefore the plaintiffs are having half share in the suit jointly and the defendants are also having half share in the suit land. **Hence, I answered this point in the Affirmative.**

12. POINT NO.3: Hon'ble Supreme court in the case reported **AIR 2009 SCW 654 Shub Karan Bubna @ Shub Karan Prasad Bub V/s Sita Saran Bubna and others** wherein it is held that a trial court shall suo-moto register FDP case and proceed with the final decree proceedings soon after drawing up the preliminary decree unless and until the preliminary decree is stayed by superior court.

Further recently in another case the **Hon'ble Supreme court of India in the case of Civil appeal No. 6406-6407/2010 Kattukandi Edathil Krishnan and another V/s Kattukandi Edathil Valsan and others** wherein it is held that;

“ 33. We are the view that once a preliminary decree is passed by the Trial court, the court should proceed with the case for drawing up the final decree suo motu. After passing of the preliminary decree, the Trial court has to list the matter for taking steps under order XX rule 18 of the CPC soon after passing of the preliminary decree for partition and separate possession of the property, su motu and without requiring initiation of any separate proceedings.

In view of the law declared by the Hon'ble Supreme court of India, this court is of opinion that there is no need to file separate of FDP case and the court ought to have register the FDP proceedings sue muto. Accordingly this court proceed to pass the following:

-O R D E R-

Suit of the plaintiffs is hereby decreed.

It is ordered and declared that, the plaintiffs are having half share jointly in the suit land Sy.No. 966/*/* measuring 7 acres 24 guntas of Kallur village, Tq: Manvi.

It is further ordered and declared that, the defendants are also entitle half share jointly in the suit land Sy.No. 966/*/* measuring 7 acres 24 guntas of Kallur village, Tq: Manvi.

No order as to cost.

Office to draw preliminary decree and office register the FDP case and to post the FDP case before the court for further proceedings on 18.08.2022.

The parties are directed to note the date fixed for hearing of the FDP case (i.e. 18.08.2022) and to appear before the court on the said date in the FDP case to participate in the said proceedings.

It it made it clear that no further notice would be issued in the FDP case.

(Directly dictated to the Stenographer on computer, corrected, initiated, signed by me and then pronounced by me in the Open Court on this the 8th day of July 2022.)

(Sri. Ashappa)
Civil Judge and JMFC, Manvi.

//ANNEXURE//**List of witnesses examined for the plaintiff:-**

P.W.1 : Hanumanthappa S/o Late Malleshappa

P.W.2 : Mallamma W/o Late Sukhamuni

P.W.3 : M.H Basavaraj S/o H.Mariyappa Kolumi

List of witnesses examined for the defendants:-

--Nil--

List of documents exhibited for the plaintiff:-

Ex. P.1, 2 and 4 : RTC's of suit lands.

Ex. P.3 : Endorsement

Ex.P.5 : Mutation

List of documents exhibited for the defendants:-

--Nil--

(Sri. Ashappa)
Civil Judge and JMFC, Manvi.