

**IN THE COURT OF THE PRL. CIVIL JUDGE
& JMFC., GUBBI**

**Present: RADHA.S, B.A., LL.M.,
Prl. Civil Judge & JMFC.,
Gubbi**

Dated this the 19th day of November 2018

O.S.No.312/2012

Plaintiff : Mangalamma W/o
Basavaraju D/o Late
Shivanna, 52 years,
R/o Hodalur, Kasaba Hobli,
Gubbi Taluk.

(By Sri. H.L.Somasundar Advocate)

Vs.

Defendants : Shivananjappa S/o Late
Shivanna, 50 years,
R/o Kempapura,
Chikka Banavara Post,
Hesaraghatta Main Road,
Bangalore.

(By Sri. S.T., Advocate)

Date of filing of suit : 17.09.2012

Nature of suit : Partition and Separate
possession

Judgment pronounced on : 19.11.2018

Total duration : Years Months Days
06 02 02

(Smt. Radha.S)
Prl. Civil Judge & JMFC.,
Gubbi.

JUDGMENT

1. This is a suit filed by plaintiff against defendant for the relief of partition and separate possession in respect of suit schedule properties.

2. The brief case of plaintiff is that, the suit schedule properties originally belong to Shivanna S/o Shanthappa @ Shanthaveeraiah who is the father of plaintiff and defendant. The said Shivanna had two wives namely Siddagangamma and Shivamma. The first wife Siddagangamma had a son by name Shivarudraiah and the second wife had one daughter and one son who are plaintiff and defendant. Shivanna and his two wives are no more and the son of first of said Shivanna was taken his share in the joint family properties under registered partition deed in the year

1961-62 made between father and son. The plaintiff and defendant are the members of joint family and they are succeeded to the properties of said Shivanna. There is no partition between the plaintiff and defendant in respect of suit schedule property. The khata and pahani of the suit schedule properties are standing in the name of plaintiff's father but recently the defendant tried to got transfer the same into his name in order to sell the suit schedule properties. After knowing this fact the plaintiff has demanded the defendant to allot her legitimate share in the suit schedule property but the defendant refused to allot her share, as such the plaintiff has filed the present suit against the defendants for partition and separate possession in respect of suit schedule property and prayed to decree the suit.

3. After registering the suit, suit summons was issued to the defendant. In pursuance of summons issued to the defendant, the defendant is put his appearance before court through his counsel and filed written statement. The defendant in his written statement has denied the entire plaint averments and stated that, the defendant is the only son of Shivamma. The first wife of his father by name Siddagangamma had only son by name Shivarudraiah, the said Shivarudraiah and plaintiff's and defendant's father had partitioned the property though registered partition deed in the year 1962. After the demise of the father of the plaintiff and defendant, the defendant succeeded the same as he is the only sole, surviving successor and has alienated the Item No.2 of the schedule property in favour of Shivarudraiah in the year

of 1985-86 through registered sale deed, this being so during the life time of father of the plaintiff and defendant i.e Shivanna had mortgaged the Item No.3 in favour of one M. Shivanna and in the year 1986 M. Shivanna in turn registered the Item No.3 in favour of plaintiff to an extent of 01 acre and remaining to the defendant and the same is well within the knowledge of the plaintiff, but the same is not brought before the Hon'ble court. Item No. 5 is not standing in the name of the defendant even though the plaintiff is claiming share over the same.

It is further submitted that the plaintiff has already got share in the suit schedule properties very long ago, but only with an intention to harass the defendant has filed the present suit for partition. The plaintiff is not

having any share in the suit schedule properties, on these grounds the defendant prayed to dismiss the suit of the plaintiff.

4. On the basis of above pleadings of both parties, the following issues have been framed by this court;

1. Whether the plaintiff proves that, the suit schedule properties are the ancestral and joint family properties of plaintiff, defendant?

2. Whether the plaintiff is entitled to the relief as prayed in the suit?

3. What Order or Decree ?

5. To substantiate her case the plaintiff herself has examined as P.W.1 and her evidence was discarded on 09-11-2017 as per memo filed by the plaintiff's counsel. There after the P.A Holder of the plaintiff has examined as PW2 and 7 documents have been got marked as Ex-

P-1 to 7 and closed her side evidence. On the other side in spite of sufficient time granted to the defendant to lead his evidence, he failed to lead his evidence as such, the evidence by defendant's side is taken as nil on 07-09-2018. Thereafter case was posted for arguments.

6. Heard the arguments of Sri H.L.S Advocate for the plaintiff and the defendant has not addressed any arguments and perused records available on file.

7. My answer to above issues are as under;

Issue No.1- In the partly affirmative.

Issue No.2- In the partly affirmative.

Issue No.3- As per final order for the Following;

::REASONS::

8. Issue No.1: To substantiate her case on preponderance of probabilities, the P.A holder

of the plaintiff viz Dayananda S/o Basavaraju who is none other than the son of the plaintiff has examined as P.W.2. The P.A holder of the plaintiff has filed his affidavit in lieu of chief examination wherein he reiterated the averments of the plaint and has produced in all 7 documents as Ex.P.1 to 7. It is the case of the plaintiff that, the plaintiff and defendant are the brother and sister and the suit schedule properties are the ancestral and joint family property of plaintiff and defendant as they are belonged to their father. After the death of plaintiff's father being his Lrs, the plaintiff and defendant succeeded to the suit schedule properties and in joint possession over the same. When the plaintiff demanded her share in the suit schedule properties to the defendant, but the defendant refused to allot the her share, hence she filed present suit.

9. The plaintiff in support of her case has produced 7 documents. Ex.P.1 is the copy of Power of Attorney executed by the plaintiff in favour of PW2. Ex-P-2 is the RTC for the 2012-2013 pertaining to suit schedule item No. 1, while perusing this document the suit schedule item No. 1 is standing in the name of one Shivanna S/o Rudrappa. Ex-P-3 is the RTC for the 2012-2013 pertaining to suit schedule item No. 2, while perusing this document the suit schedule item No. 2 is standing in the name of one Shivanna S/o Shanthaiah. Ex-P-4 is the RTC for the 2012-2013 pertaining to suit schedule item No. 3, while perusing this document in the suit schedule item No. 3 1 acre 03 guntas of land is standing in the name of one Shivanna S/o Shanthappa. Ex-P-5 is the RTC for the 2012-2013 pertaining to suit schedule item No. 4,

while perusing this document the suit schedule item No. 4 is standing in the name of one Shivanna S/o Shanthappa. Ex-P-6 is the family G-Tree of the plaintiff issued by the Village Accountant, Herur Circle, as per the provisions of the Karnataka Land Revenue Act and the Rules framed there under, only the Tahasildhar of Revenue can issue the survivorship certificate only on the basis of the application submitted by the applicant. Therefore I am of the considered opinion that this family pedigree at Ex-P-6 is not a relevant document to receive it in evidence and to place reliance upon this document. Ex-P-7 is the certified copy of registered panchayath parikath effected between the plaintiff's father and his son Shivarudhraiah.

10. I have meticulously gone through the entire documents produced by the plaintiff. As per the plaintiff's pleadings her father name is Shivanna and as per Ex-P-6 the father name of said Shivanna is mentioned as Shanthaiah but in the Ex-P-2 the suit schedule property item No. 1 is standing in the name of one Shivanna S/o Rudrappa. As per the pleadings, in the suit schedule item No. 3, 2 acres 03 guntas of land is the joint family property of the plaintiff and defendant and same was originally belonged to plaintiff's father but as per Ex-P-4 only 1 acre 3 guntas of land is standing in the name of one Shivanna S/o Shanthappa, but the father name of the said Shivanna is not tallied with the Ex-P-6. As per Ex-P-5 the suit schedule item No. 4 is standing in the name of one Shivanna S/o Shanthappa, but the father name of the said Shivanna is not tallied with

the Ex-P-6. The documents produced by the plaintiff in respect of the suit schedule item No. 1, 3 and 4 are not tallied with the pleadings of the plaintiff. It is pertinent to note that, the plaintiff has not produced document to show that, the suit schedule item No. 5 is the ancestral and joint family property of plaintiff and defendant. As per Ex-P-3, the suit schedule property item No. 2 is standing in the name of plaintiff's father as such she is entitled to get share in the suit schedule item No.2 only. The plaintiff has not produced any documents to prove that, the suit schedule item No. 1, 3 to 5 are the ancestral and joint family properties of herself and defendant. The parties have to produce documentary evidence in support of their oral evidence to prove their case or defense. As per the judgment of the Hon'ble Apex Court reported in AIR 2011 SC

(Civil) 2637 in the case of Marabasappa by LRs Versus Ningappa by LRs, the Hon'ble Apex Court while dealing with the concept of joint family property, pleased held as under;-

“HINDU LAW:- Joint Family Property- There is no presumption of joint family property- There must be some strong evidence in favour of the same- This burden is always on the plaintiff who claims partition- Once this burden is discharged, then the burden shifts on the defendant that property is self acquired”

In view of the above dictum, the heavy burden lies on the present plaintiffs to prove that, the suit schedule properties are the ancestral and joint family properties. In order to prove this burden the plaintiff has not adduced any documentary evidence before the Court except suit item No.2. As per Ex-P-3 the suit schedule item No. 2 is standing in

plaintiff's father name. The said Shivanna i.e father of the plaintiff died intastate as such the plaintiff and defendant are entitle to get share in the suit schedule item No. 2. It is pertinent to note that, the evidence of the PW2 is not been denied by the defendant by way of cross examination as such the evidence of PW2 is remained unchallenged. In the present case on hand the plaintiff has not produced any documentary evidence in support of their oral evidence in respect of suit schedule item No. 1, 3 to 5. On the other hand the defendant has not adduced any evidence and not produced any documents in support of his defense. Under such circumstance there is impediment for this court to accept the case of plaintiff as against defendant in respect of suit schedule item No. 2. Hence I answer issue No.1 in the partly affirmative.

11. Issue No.2: In view of above discussion made and conclusion arrived at issues No. 1, the plaintiff is entitled to get share in the suit schedule item No. 1 only as such the suit of the plaintiff is liable to be partly decreed. Hence I answer issue No. 2 in partly affirmative.

12. Issue No.3 : In view of above discussion made on Issue Nos. 1 and 2, I proceed to pass the following;

O R D E R

Suit of the plaintiff is hereby partly decreed.

Suit of the plaintiff is hereby dismissed in respect of suit schedule item No. 1, 3 to 5.

The plaintiff is entitled to get half (1/2) share in the suit schedule item No. 2.

The defendant is entitled to get half
(1/2) share in the suit schedule item No. 2
subject to payment of court fee.

Office to draw preliminary decree
accordingly.

(Prepared by me directly on computer, corrected by me then
the Stenographer has taken print out, after taking printout
corrected, signed and then Judgment pronounced by me in
open court on 19th day of November 2018.)

(Smt. Radha.S)
Prl. Civil Judge & JMFC.,
Gubbi.

ANNEXURE

1. Witnesses examined on behalf of plaintiff-

P.W.1 : Mangalamma.
P.W.2 : Dayananda.

2. Documents marked on behalf of plaintiff-

Ex.P.1 : Original copy of Power of Attorney.
Ex.P.2 to 5 : 4 RTCs
Ex.P.6 : Family genealogy.
Ex.P.7 : Certified copy of registered panchayath
Parikath.

3. Witnesses examined on behalf of defendants-
-NIL-

4. Documents marked on behalf of defendants-.
-NIL-

(Smt. Radha.S)
Prl. Civil Judge & JMFC.,
Gubbi.