

IN THE COURT OF PRL. SENIOR CIVIL JUDGE & JMFC,**MUDHOL.****Before: Sri S.SREEDHARA****B.E. LL.B.,****Prl. Senior Civil Judge & JMFC****Mudhol.****Dated this the 19th day of June - 2019****Regular Appeal No.01/2018****Appellants/:****(Original defendants No.1 to 12)**

1. Smt. Tungawwa W/o: Timmanna Daddi
Age: 55 years, Occ: Agriculture.
2. Sri. Ramesh S/o: Timmanna Daddi
Age: 29 years, Occ: Agriculture.
3. Sri. Venkappa S/o: Timmanna Daddi
Age: 30 years,
All are R/o: Bidari, Tq: Jamakhandi
Dist: Bagalkot.
4. Smt. Sumitra W/o: Gangappa Patil
Age: 54 years, Occ: Agriculture
R/o: Shirabur, Tq: Bijapur.
5. Sri. Bhimappa S/o: Satteppa Bidari
Age: 65 years, Occ: Agriculture
R/o: Petlur, Tq: Mudhol.
6. Sri. Kushal S/o: Hanamappa Dadanatti
Age: Major, Occ: Agriculture
R/o: Petlur, Tq: Mudhol.
7. Sri. Shivanagouda S/o: Gangadhar Patil
Age: 34 years, Occ: Agriculture
R/o: Shirabur, Tq/Dist: Bijapur.

8. Smt. Ratnawwa W/o: Kushappa Dadanatti
Age: 48 years, Occ: Agriculture
R/o: Petlur, Tq: Mudhol.
9. Smt. Doddawwa W/o: Hanamant Dadanatti
Age: 45 years, Occ: Agriculture
R/o: Petlur, Tq: Mudhol.
10. Smt. Kamalawwa W/o: Pandappa Dadanatti
Age: 40 years, Occ: Agriculture
R/o: Petlur, Tq: Mudhol.
11. Sri. Dundappa S/o: Bhimappa Bidari
Age: 55 years, Occ: Agriculture
R/o: Petlur, Tq: Mudhol.
12. Sri. Ramanna S/o: Bhimappa Bidari
Age: 46 years, Occ: Agriculture
R/o: Petlur, Tq: Mudhol
Dist: Bagalkot.

- Versus -

**Respondent::
(Original Plaintiff)**

1. Smt. Chandrawwa W/o: Goudappa Udupudi
Age: 42 years, Occ: Agriculture
R/o: Kamakeri, Tq: Ramdurg
Dist: Belagavi.

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Appellants by Sri.P.M.V, Advocate

Respondent by Sri. G.S.P Advocate

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Date of decree under Appeal:	Against the judgment and decree passed in O.S.No.102/2008 dated 30.11.2017 by the Addl. Civil Judge & JMFC, Mudhol.		
Nature of the Suit and order appealed against:	Suit for partition and separate possession.		
Date of Institution of present Appeal:	08.01.2018		
Date of the pronouncement of judgment	19.06.2019		
Duration of the Appeal:	Year/s 01	Month/s 05	Day/s 11

Sd/-
(S.SREEDHARA)
Prl. Senior Civil Judge & JMFC,
Mudhol.

: J U D G M E N T :

The defendants/appellants have filed this appeal Order 41 Rule 1 R/w Sec.96 of CPC by challenging the judgment and decree passed by the learned Addl. Civil Judge & JMFC, Mudhol in O.S.No.102/2008 dated 30.11.2017.

2. For the sake of convenience, the parties will be referred to their original ranks as referred to before the trial court. The plaintiff/respondent has appeared through her counsel and challenged the appeal.

3. The lower Court records has been secured by this Court.

4. **The brief facts of the plaintiff's case is as under;**

That the suit schedule lands were owned and possessed by the plaintiff and defendant No.1 to 4 jointly. The said properties originally belongs to one Ramanagouda who died about one year back and his wife Smt. Parvatewwa has predeceased him. The said Ramanagoud died by leaving behind 4 daughters, out of which one daughter Kasturevva is dead. The defendant No.1, 4 and the plaintiff are the legal heirs of Ramanagouda who have succeeded to suit properties after his death. The plaintiff, defendant No.1 and 4 have inherited the properties and started cultivating the suit lands jointly. There was no partition effected in the family. The defendant No.2 and 3 are the sons of defendant No.1 whose names appeared in the record of rights. The defendant No.1 and 4 behind her back have got entered their names in the record of rights by submitting a false waradi during the life time of Ramanagouda. It is also falsely stated that she has received a sum of Rs.50,000/-

towards her share. During the life time of Ramanagouda, his daughters have no right, title or interest in the suit properties and hence there was no question of effecting partition. The defendant No.4 on the basis of false waradi has got entered her name in the record of rights relating to the property bearing R.S.No.19/1A. Similarly the defendant No.1 to 3 have got entered their names in the record of rights relating to R.S.No.88/2B. The defendant No.4 has executed a gift deed in favour of her son Shivanagouda Gangadhar Patil on 27.02.2008. The defendant No.4 is not the absolute owner of the property bearing R.S.No.19/1A and she is not competent to execute any gift deed. The said gift deed dtd:27.02.2008 is illegal and not binding her right of share. She has demanded the defendant No.1, 2 and 4 to effect partition, but they have refused the same. Hence she has approached the learned trial court for the relief of partition and separate possession and thereby requested the court to decree the suit as prayed for.

5. The defendant No.1 to 4 have contested the suit by filing their written statement which is adopted by defendant No.5 and 6. The defendant No.1 to 4 have

totally denied the averments of the plaint. They have contended that the father of plaintiff, defendant No.1, 4 and deceased Kasturevva namely Ramanagowda is the family propositus. The suit properties and another land bearing R.S.No.3/2A are the ancestral properties of said Ramanagouda. Due to difference arose in the family, the deceased Ramanagouda and all his daughters have effected partition on 13.07.2001. In the said partition the deceased Ramanagouda and the plaintiff have received a sum of Rs.50,000/- each towards their share. The suit item No.2 property was fallen to the share of defendant No.4 and suit item No.1 property was fallen to the joint shares of defendant No.1 to 3. They have effected mutation as per partition vide M.E.No.2190. Since from date of partition, the defendant No.1 to 3 are enjoying suit item No.2 property and the defendant No.4 is enjoying suit item No.1 property. The plaintiff is not in possession of the suit properties since from the date of effecting partition. As the name of Kasturevva has appeared in the record of rights relating to R.S.No.3/2A, there was no chance to again mutate the said property in her name. The plaintiff has purchased R.S.No.3/2A from Kasturevva in the year-2004. The plaintiff in order to save

the stamp duty and registration fees, has got mutated her name in the record of rights relating to R.S.No.3/2A vide M.E.No.2398/2003. Accordingly the property bearing R.S.No.3/2A was fallen to the share of plaintiff and a sum of Rs.50,000/- was given to the share of Kasturevva. The said mutation order is created only to transfer the name of the plaintiff in record of rights. The defendant No.4 has executed a gift deed in favour of her son Shivanagouda on 27.02.2008 who is enjoying the same as its absolute owner. The suit of the plaintiff is bad for non-joinder of necessary parties. The plaintiff has filed this suit only to cause harassment. Hence they have requested the court to dismiss the suit with costs.

6. On the basis of above pleadings, the learned Trial court has framed the following;

:: I S S U E S ::

- 1. Whether the plaintiff proves that the suit schedule properties are ancestral properties of plaintiff and defendants family?**
- 2. Whether the plaintiff further proves that she is in joint possession of the suit schedule properties along with**

defendants?

- 3. Whether the plaintiff is entitled for 1/3rd share in the suit schedule properties?**
- 4. Whether the defendants prove that the suit is bad for non-joinder and mis-joinder of necessary parties?**
- 5. Whether the defendant No.4 proves that Shivanagouda has acquired title over the gifted property under gift deed dtd:27.02.2008?**
- 6. What order or decree?**

7. During trial, P.W.1 and PW.2 are examined on behalf of plaintiff who got marked Ex.P.1 to Ex.P.22 documents. On the other hand, DW-1 and DW.2 are examined on behalf of defendants who got marked Ex.D.1 to D.17 documents.

8. After hearing the arguments on merits, the learned trial court has struck off issue No.1 on 08.02.2009 and answered issue No.2, 3 in the affirmative, issue No.4 and 5 in the negative and thereby decreed the suit of the

plaintiff.

9. Aggrieved by the said judgment and decree of the Trial Court, the defendants have preferred this appeal on the following;

:: G R O U N D S ::

That, the judgment and decree passed by the Trial Court is arbitrary, perverse, capricious, and contrary to law, facts and evidence of the case. The Trial court has not framed the issues properly and also that the trial court has not properly understood the real points under dispute. The trial court has wrongly come to the conclusion that the plaintiff is entitled for 1/3rd share without considering the fact of the case. The trial court has not properly appreciated the oral and documentary evidence placed by both parties which results in miscarriage of justice. The trial court ought to have dismissed the suit of the plaintiff. Hence they have requested the court to allow the appeal in the interest of justice and equity.

10. On the basis of above contentions, the following points arose for my consideration are as under;

::P O I N T S ::

1. Whether the learned Addl. Civil Judge Mudhol is justified in decreeing the suit of the plaintiff filed in O.S.No.102/2008 dated 30-11-2017?

2. What order?

11. Heard the arguments of Sri PMV advocate for appellants and Sri GSP advocate for respondent.

12. On perusal of records, oral and documentary evidence placed before this Court, my answers to the above issues are as under;

Point No.1: In the Affirmative

Point No.2: As per final order for the following;

:: R E A S O N S ::

13. Point Nos.1 :- The plaintiff has approached the learned trial court for the relief of partition and separate possession of her 1/3rd share in the suit properties together with court cost. The defendant No.1 to 4 have filed their written statement by denying the averments of the plaint and thereby requested the court to dismiss the suit of the plaintiff. The defendant No.5 and 6 by filing a

memo have adopted the written statement of defendnat No.1 to 4.

14. In support of her case, the plaintiff herself was examined as PW-1 who got marked Ex.P.1 to Ex.P.22 documents. On the other hand, DW-1 and DW.2 are examined on behalf of defendants who got marked Ex.D.1 to Ex.D.17 documents. The above witnesses are cross examined in detail.

15. The plaintiff has claimed partition in the suit properties on the ground that the suit properties originally belongs to her father Ramanagouda who died about a year back. The defendant No.1 to 4 in para No.10 of the written statement have pleaded that one Ramanagouda is the father of plaintiff, defendant No.1, 4 and deceased Kasturewwa. They have also stated that the suit lands and another property bearing R.S.No.3/2A are the ancestral properties of deceased Ramanagouda. They have contended that a partition deed was executed on 13.07.2001 by the deceased Ramangouda, the present plaintiff, defendant No.1, 4 and Kasturevva. In the said partition, the plaintiff and deceased Ramanagouda

have received a cash of Rs.50,000/- each towards their share. The suit item No.1 property was allotted to the joint share of defendant No.1 to 3, the suit item No.2 property was allotted to the share of defendant No.4 and the property bearing R.S.No.3/2A was allotted to the share of deceased Kasturibai. On these grounds, the defendants have resisted the claim of the plaintiff.

16. The defendant No.1 to 4 by filing their written statement have admitted the relationship with the plaintiff. They have also admitted that the suit schedule properties are the ancestral properties of the deceased Ramanagouda. However they have contended that the property bearing R.S.No.3/2A is also the ancestral property of deceased Ramanagouda. The defendants have resisted the claim of the plaintiff on the ground that a partition has already been effected through a deed of partition executed on 13.07.2001. If the defendants succeeds to prove the alleged partition effected on 13.07.2001, then the plaintiff is not entitled to claim share in the suit properties.

17. Ex.P.1 RTC, extract discloses that the suit item No.1

property is standing in the name of defendant No.1 to 3 and the mode of accusation is shown as varasa in column No.10. Ex.P.1 document does not disclose that the suit item No.1 property was allotted to the share of defendant No.1 to 3 through the alleged partition deed dtd:13.07.2001. Ex.P.4 RTC, extract relates to item No.1 property standing in the name of deceased Ramanagouda who is the father of plaintiff, defendant No.1 and 4. Ex.P.5 is the mutation register extract effected on 16.06.2001 which discloses that the suit item No.1 property was mutated in favour of defendant No.1 and suit item No.2 property was mutated in favour of defendant No.4. When the defendants themselves have contended that the alleged partition deed was executed on 13.07.2001, then the suit properties cannot be mutated in the names of defendant No.1 to 4 on 16.06.2001 which is prior to the date of execution of alleged partition deed.

18. Ex.P.10 to Ex.P.13 are the RTC, extracts and mutation register extract which discloses that an extent of 01 acre 36 guntas each are standing in the names of defendant No.9 and 10 by virtue of a sale transaction. In

Ex.P.11 and Ex.P.12, the date of sale deed is shown as 09.01.2011 i.e., during pendency of the present suit. Therefore, the alleged sale transaction took place during pendency of the suit and the same is hit by principles of Lis-pendense.

19. Ex.P.14 to Ex.P.16 are the certified copies of sale deeds dtd:19.11.2010 through which the defendant No.1 to 3 have sold an extent of 01 acre 36 guntas in item no.1 property in favour of defendant No.8 to 10 during pendency of the suit. Therefore the sale transactions held through Ex.P.14 to Ex.P.16 are hit by principles of Lis-pendense and the result of this suit binds the said sale transaction. The plaintiff by producing Ex.P.4 RTC, extract has proved that the suit item No.1 property belongs to her father Ramanagouda who died intestate.

20. Ex.P.3 is the RTC, extract relating to item No.2 property standing in the name of deceased Ramanagouda. Ex.P.6 is the copy of sale deed dtd:30.06.2011 executed by defendant No.4 and 7 in favour of defendant No.11 and 12. Ex.P.7 to Ex.P.9 and Ex.P.17 are the subsequent revenue records through

which the mutation was effected in the name of defendant No.4 and then in the names of subsequent purchasers. Since Ex.P.6 sale deed was executed during pendency of the suit, then it is hit by principles of Lis-pendense. The plaintiff has produced Ex.P.18 to Ex.P.22 RTC, extracts standing in the names of other persons who are not related to the family of deceased Ramanagouda. Similarly these RTC, extracts does not belongs to suit item No.1 and 2 properties. The plaintiff by producing Ex.P.3 RTC, extract has proved that the suit item No.2 property belongs to her father Ramanagouda who died intestate.

21. The defendants have produced Ex.D.2 mutation register extract which is similar that of Ex.P.5 document. However they have not produced the alleged partition deed dtd:13.07.2001 as pleaded in their written statement in support of their defence. Ex.D.4 and Ex.D.5 are the RTC, extract and M.R. extract relating to R.S.No.3/2A property standing in the name of present plaintiff. Ex.D.7 is the death certificate of deceased Kasturevva who died on 17.02.2004 i.e., much earlier to the date 09.09.2005. Ex.D.10 is the copy of registered

gift deed dtd:27.02.2008 through which the defendant No.4 has gifted suit item No.2 property in favour of defendant No.7. However the burden lies upon the defendants to prove that the suit item No.2 property was allotted to the share of defendant No.4 through the alleged partition deed dtd:13.07.2001. The defendants have also produced Ex.P.12 to Ex.P.17 RTC, extracts relating to some other properties standing in the names of one Gururaj and Potareddi which are not related to the suit properties.

22. In the present case it is an admitted fact that the suit properties are the ancestral properties of deceased Ramanagouda who died by leaving behind the plaintiff, defendant No.1 and 4. It is an admitted fact that another daughter Kasturibai died prior to the death of Ramanagouda on 17.02.2004 as per Ex.D.7 document. When the suit properties are the ancestral properties of deceased Ramanagouda, then the plaintiff, defendant No.1 and 4 along with Ramanagouda each are having equal share in the suit properties since the deceased Ramanagouda was alive on 09.09.2005. The another daughter Kasturevva died on 17.02.2004 and as such she

is not entitled to claim share in the suit properties. The defendants have contended that a partition deed was executed on 13.07.2001 by the deceased Ramanagouda and all his daughters. It is also contended that Ramanagouda and the present plaintiff have received a sum of Rs.50,000/- each towards their share. Another daughter Kasturibai has received the property bearing R.S.No.3/2A towards her share. In the said partition the suit item No.1 property was allotted to the joint share of defendant No.1 to 3 and suit item No.2 property was allotted to the share of defendant No.4. Thereby it is clear that the defendants have raised a specific defence about the partition deed executed by the family members on 13.07.2001. The defendants even after contending about the alleged partition deed, have not at all produced the same before the trial court. When the alleged partition deed is the material document for the defendants to prove their case, then they ought to have produced the same in support of their defence. The defendants have withhold the alleged partition deed which is a material document and hence an adverse interference has to be raised against them. Thereby the defendants have failed to prove that a partition had

already been effected on 13.07.2001 and hence the plaintiff is not entitled to claim share in the suit properties.

23. Sri P.M.V. advocate for appellants has argued that the plaintiff at one stage admits the mutation effected in favour of Kasturevva in respect of R.S.No.3/2A and at a later stage, she has disputed the mutation orders effected as per Ex.P.5 document. He has also argued the plaintiff has not included the property bearing R.S.No.3/2A which is also the ancestral property of deceased Ramanagouda. At this stage it is relevant to note that Ex.D.1 is the mutation register extract effected on 20.10.1981 which discloses that the deceased Ramanagouda has relinquished his rights in the property bearing R.S.No.3/2A in favour of Kasturevva. Even though the said property was given to Kasturibai, the remaining daughters have not challenged the said mutation till today. When the deceased Ramanagouda during his life time has relinquished his rights in R.S.No.3/2A property in favour of Kasturibai which is not challenged by other daughters, then the arguments canvassed by Sri P.M.V advocate does not holds any water. Therefore, the

plaintiff need not include the property bearing R.S.No.3/2A since the same was given to Kasturibai in the year 1981 itself.

24. The learned trial court by considering the oral and documentary evidence in a proper manner has rightly decreed the suit of the plaintiff. The trial court has not committed any error or illegality in decreeing the suit of the plaintiff. The appellants have not made out any ground in this appeal to interfere with the judgment and decree of the trial court. The trial court is justified in allowing 1/3rd share to the plaintiff which does not requires any interference of this court. **Hence, I answer point No.1 in the affirmative.**

25. Point No.2:- As discussed in the above said paragraphs, I proceed to pass the following;

:: O R D E R ::

- a. The appeal filed by the defendant No.1 to 4/appellants U/O.41 Rule 1 R/w Sec.96 of CPC, is hereby dismissed.**

- b. The judgment and decree passed by the learned Additional Civil Judge, Mudhol in O.S.No.102/2008 dtd:30.11.2017 is hereby confirmed.**
- c. No order as to cost.**
- d. Draw decree accordingly.**
- e. Send back LCR, with copy of judgment and decree of this appeal to the learned trial court forthwith.**

(Dictated to Stenographer, transcribed by her, script corrected, signed and then pronounced in the open court by me on this the **19th DAY OF JUNE-2019**).

**Sd/-
(S.SREEDHARA)
Prl. Senior Civil Judge & JMFC,
Mudhol.**

