

**IN THE COURT OF THE SENIOR CIVIL JUDGE & J.M.F.C,
AT CHANNAGIRI**

**Present: Sri. G.V. Chandrashekhar,
Sr. Civil Judge & JMFC.,
Channagiri.**

Dated this the 29th day of November, 2018

R.A.No.01/2018

B. Rangappa,
S/o Late Basappa,
Aged about 69 years,
Occ: Rtd. Teacher and Agriculturist,
R/o Garaga Navilehal Village,
Basavapattana Hobali
Channagiri Taluk, Davanagere Dist.

: Appellant

(By Sri. K.G.G., Adv.,)

1. K. Basappa.,
S/o Late Rangappa,
Dead by Lrs'

: Respondents

1(a). Smt. Girijamma
W/o Ramachandrappa
Aged about 74 years,
Occ: House wife,
R/o Navilehal Village,
Basavapattana Hobali
Channagiri Taluk,
Davanagere Dist.

Dead by Lr's

- 1(a-1).** Smt. Anusuyamma,
W/o Rajashekarappa,
Aged about 53 years,
Occ: House wife,
R/o Navilehal Village,
Basavapattana Hobali
Channagiri Taluk,
Davanagere Dist.
- 1(a-2).** Smt. Indramma,
W/o Prabhu,
Aged about 50 years,
Occ: House wife,
R/o Kagathuru Village,
Kasaba Hobali
Channagiri Taluk,
Davanagere Dist.
- 1(a-3).** Sri. Prakash,
S/o Ramachandrappa,
Aged about 48 years,
Occ: Agriculturist,
R/o NavilehalVillage,
Basavapattna Hobali
Channagiri Taluk,
Davanagere Dist.
- 1(a-4).** Sri. Ashoka,
S/o Ramachandrappa,
Occ: Agriculturist,
R/o Navilehal Village,
Basavapattana Hobali
Channagiri Taluk,
Davanagere Dist.
- 1(a-5).** Sri. Prasanna,

S/o Ramachandrappa,
Occ: Agriculturist,
R/o Navilehal Village,
Basavapattana Hobali
Channagiri Taluk,
Davanagere Dist.

- 1(a-6).** Sri. Manjunatha,
S/o Ramachandrappa,
Occ: Agriculturist,
R/o Navilehal Village,
Basavapattana Hobali
Channagiri Taluk,
Davanagere Dist.
- 1(b).** Smt. Dakshyanamma,
W/o Late Rudrappa,
Aged about 69 years,
Occ: House wife,
R/o Navilehal Village,
Basavapattana Hobali
Channagiri Taluk,
Davanagere Dist.
- 1(c).** Sri. Ekanthappa,
S/o Late K.Basappa,
Aged about 68 years,
Occ: Rtd. Conservator of Forest,
R/o D. No. 851/7,9th Cross near
2nd bus stop, Tharabalu Extension,,
Davanagere Dist.
- 1(d).** Smt. Suvarnamma,
W/o Sharanappa,
Aged about 63 years,

Occ: House wife,
R/o Kolahal Village,
Bharamasagara Hobali
Chitradurga Taluk & Dist.

- 1(e).** Smt. Suvarnamma,
W/o Rangappa,
Aged about 54 years,
Occ: House wife,
R/o Gyarehalli Village,
Near Sasaluhalla, Holalkere Taluk
Chitradurga Taluk & Dist.
- 1(f).** Smt. Sulochanamma,
W/o Late Shivalingappa,
Aged about 52 years,
Occ: House wife,
R/o Somanal Village,
Santhebennuru Hobali
Channagiri Taluk, Davanagere Dist.
- 1(g).** Smt. Gangamma,
W/o Thippeswamy,
Aged about 50 years,
Occ: House wife,
R/o Kalleshwara Nilaya, D.No. 892/42,
14th Cross Vidya Nagara,
Davanagere Taluk & Dist.
- 2.** Sri. Rajashekharappa,
S/o Basappa,
Aged about 59 years,

3. Sri. Shivakumar,
S/o Basappa,
Aged about 63 years,
4. Smt. Anusuyamma,
W/o Rajashekharappa,
Aged about 43 years,

(D.No. 2 to 4 are Agriculturist
R/o Navilehal Village,
Basavapattna Hobali
Channagiri Taluk, Davanagere Dist.

(By Sri. Y.M.R., Adv.,)

1	Date & nature of decree appealed against	Judgment and decree passed in O.S.No.09/2009 by the Prl. Civil Judge (Jr.Dn) Channagiri, dtd. 08/11/2017.
2	Date of Institution of the appeal	09/01/2018
3	Date of Judgment	29/11/2018
4	Duration of the Appeal	Year/s Month/s Day/s 00 10 20

**(Sri. G.V. Chandrashekhar),
Senior Civil Judge and J.M.F.C,
Channagiri.**

J U D G M E N T

This is the Regular Appeal preferred by the plaintiff being aggrieved by the Judgment and decree passed in O.S.No.09/2009 by the Prl. Civil Judge (Jr.Dn) Channagiri, dtd. 08/11/2017 under Order 41 Rule 1 r/w 151 of CPC., wherein the suit of the plaintiff was dismissed.

2. For sake of convenience the parties to the appeal are referred to as per their rank in the original suit.

3. The brief facts of the case of the plaintiff is as follows:-

The plaintiff submits that his father died earlier. The defendant no.1 who died during the proceeding was the karth and was managing the suit schedule property and the defendant no.1 are the brothers and children of late father. The plaintiffs submits that the said Basappa is father had no other separate income and that he had purchased all the suit schedule properties from the income derived out of the suit schedule property and therefore all the suit schedule properties were all joint family properties. The plaintiffs submits that after the division of the properties with respect to the brothers i.e. his uncles, the defendant no.1 Basappa became the absolute owner and in possession of the suit schedule property and that in the year 2001 an oral partition took place in the presence of elders and that 3 ankana house, cattle shed and "ಕಣ" and an agricultural land of 8 acres in Sy.No.1, Sy.No.34/2, Sy.No.78 and 79 being described as a suit A and B schedule property were allotted to the plaintiff share and the plaintiff submits that he has been in exclusive

possession and enjoyment of the same and the plaintiffs submits that somewhere in the year 2006, he got the knowledge about the execution of the registered gift deed being executed by his late father defendant no.1 where indiscriminately his father having no manner of right, title or interest over the partitioned properties and that the portion i.e. Sy.No.34/2 that the plaintiffs share of 2.39 acres were gifted to the defendant no.4 which the plaintiffs contends that his father did not have any rights what so ever to execute the said gift deed and submits that the said gift deed is not at all binding and prays for declaration to the effect that the said gift deed is null and void and hence this suit.

4. To this defendant no.1, 2, 3 & 4 have filed the written statement separately and their main contention in the written statement is to the effect is that the plaintiff had separated way back in the year 1974 and that he was given 5 acres of agricultural land having Sy.No.123 situated at Chikkabennur village, Channagiri taluk and also was given Rs.1,00,000/- cash and since that time the plaintiff has separated from the joint family of the defendants and has been leading the independent life along with his family and that the contact was lost by plaintiff, had never visited defendants place, never enjoyed the properties of defendants at any point of time, was in possession and the defendants submits that the defendant no.1 along with their children developed the properties and they were acquired out of separate income and that the defendant no.1 had gifted Sy.No.23/B, 34/1A, in favour of the defendant no.4 out of love and affection and therefore the defendant no.4 became

the absolute owner in the suit schedule properties and contends that the plaintiffs being employed as a teacher and joined service, had no contact with the defendants and has residing in Shimoga. Therefore submits that the suit filed by the plaintiff has no cause of action made out by the plaintiff, is a made up one just to file the suit and prays for dismissing the said suit.

5. Based on the pleadings, the following Issues were framed by the trial court:

ISSUES

1. **Whether plaintiff proves that, in the year 2001 there was oral partition between the plaintiff and the defendants?**
2. **Whether plaintiff proves that, in the partition 'A' 'B' schedule properties fallen to his share?**
3. **Whether plaintiff proves that, he is in possession and enjoyment of suit schedule properties?**
4. **Whether plaintiff proves interference as alleged in the plaint?**
5. **Whether this court is not having jurisdiction to entertain the suit?**
6. **Whether plaintiff entitle for reliefs sought for?**

7. What order or decree?

6. The plaintiff examined 3 witnesses and got marked 35 documents. The defendant have examined 3 witnesses and 16 documents were got marked.

7. The trial court after perusing the evidence and materials on record and after hearing both the sides had framed 7 issues and answered issue no.1 & 6 negative and had dismissed the suit.

8. Being aggrieved by the said judgment and decree passed by the trial court the plaintiff has come up in appeal, contending interalia among other things.

9. That the trial court had not at all considered the material documents, depositions of the plaintiffs, has not at all applied its judicial mind came to wrong conclusion, that the said reasoning is arbitrary and capricious is not all based on sound principles of law with, the oral and documentary evidence were not at all based assessed correctly and hence submits that judgment & decree passed by the trial court is without any basis and therefore prays for setting aside and judgment decree and to declare that the said gift deed as null and void and to decree the suit.

10. After securing the presence by the respondent and the lower court records, heard the arguments and perused the records.

11. After hearing both the sides and perusing the records, the points that arise for my consideration are:

1. Whether the trial court was correct in coming to conclusion to the effect that the properties mentioned in the gift deed were not at all the subject matter of the suit?
2. Whether the trial court rightly refused the relief claimed by the plaintiff?
3. What order or decree?

12. On the appreciation of the materials on records and hearing the arguments, I answer the above points are as under:

Point No.1	:	<i>In the Affirmative</i>
Point No.2	:	<i>In the Negative</i>
Point No.3	:	As per final order, for the following:

REASONS

13. **Point No.1 & 2 :-** Since these points are interrelated with each other, they are considered together to avoid repetition:-

14. The plaintiff has filed the suit claiming for the relief of declaration of gift deed executed by his father in the year 2006 to be declared as null and void. The plaintiff has contended that his father get the suit schedule properties by way of partition amongst his brothers and that his father did not have any part from the suit schedule property and therefore contended that his father have did not have any rights

absolute right to gift away the suit schedule property whereas on the other hand the defendants have contended that the said plaintiff has got separated from the joint family as well as the properties way back in the year 1974 and that he was allotted 5 acres of land of situated at Malebennur and was also given Rs.1,00,000/- cash and since that date the plaintiff has no contact what so ever that the joint family properties as well as properties was not at all the principle of the joint family. They also contended that later on the said plaintiff has got himself appointed as a school teacher and retired as a Govt. School Headmaster and during his service the plaintiff was not at all in contact with the joint family and was residing with his family in the place of his work and that they contended the plaintiff has suppressed the oral partition of the year 1974 and after retirement making up a cause of action just to file the suit and has filed the false suit.

15. It is to be noted that in order to prove his case has got examined himself as Pw1 and in his evidence, it has come to the effect that he had 5 acres of agricultural land at Malebennur village and admittedly it is to be noted that the plaintiff had joined in service in the year 1974 and that he had no income of his own during the year 1974 and when such being the situation therebeing property of 5 acres at Malebennur clearly shows that and strengthens the defendants versions that the plaintiff had got separated from the joint family as well as the property and that he had been living separately from the joint family. Admittedly the plaintiff himself has admitted that he got Government

job as a High School teacher and served at various place in Bhadravathi and Shimoga and it has also come in the evidence that the plaintiffs has his own house at Shimoga which clearly indicates that the plaintiff has got separated from the joint family.

16. Further the plaintiff has filed this suit seeking for the relief of declaration of Gift deed executed by his father in the year 2006 to be declared as null and void. But if we peruse the gift deed which has been marked as Ex.P1 the properties shown in the gift deed in Sy.No.23/B measuring 2.3 acres and in Sy.No.34/1B situated in Navilehal village measuring 2.9 acres of land, if we peruse the suit schedule properties it is to be noted that the suit schedule properties are not only the properties mentioned in the gift deed but also Sy.No.1 garden land measuring 33 guntas, Sy.No.34/2 situated Navilehall village measuring 2.39 acres Sy.No.77 measuring 2.29 acres situated at Karekatte villge and old unkana house bounded by cattle house wherein the measurements are not at all shown and "ಕಣ" in Sy.No.41/2A measuring 12 guntas out of 16 guntas wherein the measurements are not mentioned and it is to be noted that trial court in its judgment para no.16 of the said judgment has clearly noted and reasoned to the effect that Sy.No.34/1, 34/2, 34/1A where as a property but property belong to the defendant no.1, 2nd property belongs to that Malleshappa and the trial court has situated that the said Malleshappa has not at all made a party to the suit and the trial court has rightly noted down that the suit schedule property mentioned in the Gift deed not at all the sub matter of

the suit and therefore the trial court has rightly reasoned to the effect that the total pleadings of the plaintiffs is inconsistent and the plaintiff was himself confused as to whether it is Sy.No.34/2 or 34/1A. So thus therebeing a confusion in mind of the plaintiff himself regarding the suit schedule property which had fallen to his share. The trial court has correctly deduced in para.18 that the oral and documentary evidence produced by the plaintiff is not at all in consonance with the plaintiff averments and therefore the trial court had come to conclusion that plaintiff has failed prove his case. Thus no error has committed by the trial court and the trial court had correctly come to a conclusion and had dismissed the suit. The said judgment and decree passed by the trial court is well reasoned and backed up by the materials on records and has legal legs to stand upon and therefore I have to answer the point no.1 in the affirmative and point no.2 in the negative.

17. Point No.3 :- In view of my findings on point No.1 and 2, I proceed to pass the following:

ORDER

The appeal filed by the appellant under Order 41 Rule 1 r/w sec.151 of CPC., is hereby dismissed.

Judgment and decree passed in O.S.No.09/2009 by the Prl. Civil Judge (Jr.Dn)

Channagiri, dtd. 08/11/2017 is hereby confirmed.

Draw decree accordingly.

Send the copies of the judgment and decree of this appeal along with LCR to the trial court as per law.

(Dictated to the stenographer, transcribed by her. The transcript revised by me, and then pronounced in the open court on this the 29th day of November, 2018.)

**(Sri. G.V. Chandrashekhar),
Senior Civil Judge & J.M.F.C,
Channagiri.**