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IN THE COURT OF THE III ADDITIONAL CIVIL JUDGE & JMFC

AT: ATHANI

DATED THIS THE 16th DAY OF DECEMBER 2023

: PRESENT:

SRI. SAYED MOHIUDDIN URF KHAWAJA PEERAN., BA. LLB.,(Spl.)

III ADDITIONAL CIVIL JUDGE & JMFC., ATHANI.

O.S. No.25/2023

**PLAINTIFF/s : 1) Sri. Shravan Dharmanna Samagar @
Takatrao,**
Age: 65 years, Occu: Agriculture,
R/o: Halyal,
Tal. Athani, Dist. Belagavi.

**2) Sri. Subash Dharmanna Samagar @
Takatrao,**
Age: 59 years, Occu: Agriculture,
R/o: Halyal,
Tal. Athani, Dist. Belagavi.

Vs

DEFENDANT/s : 1) Sri. Vinayak Mahipati Takatrao,
Age: 45 years, Occu: Service,
R/o: C-1203, Ouram Building,
Beside Nana-nani Park. S.V. Road,
Goregaon (West), Mumbai-105.

2) Sri. Nandkumar Jakkappa Takatrao,
Age: 67 years, Occu: Retired,
R/o: 6-7 Hanuman Building, Lamington road,
Chunamlen Mumbai-7.

3) Sri. Vishal Jnyaneshwar Takatrao,

Age: 44 years, Occu: Service,
R/o: C-1203, Ouram Building,
Beside Nana-nani Park. S.V. Road,
Goregaon (West), Mumbai-105.

IA.No.I

**APPLICANT/PLAINTIFFS : Sri. Shravan Dharmanna Samagar
@ Takatrao and Anr.**

(Rep. by Sri. K.H.A., Advocate)

V/s

**RESPONDENT/DEFENDANTS : Sri. Vinayak Mahipati
Takatrao and Ors.**

(Rep. by Sri. P.B.S., Advocate)

ORDER ON IA.No.I

The plaintiffs have filed the IA No.I under Order 39 Rule 1 and 2 of CPC restraining the defendants from alienating the suit schedule properties bearing Sy.No.77/1B/2 measuring 14 gunta, Sy.No.77/1B/3 measuring 14 gunta and Sy.No.77/1B/4 measuring 14 gunta situated at Halyal village of Athani Taluk till disposal of the suit.

2. In the accompanying affidavit to the said IA., it is stated by the plaintiff No.1 that, originally the suit schedule properties were entered in the name of plaintiffs and defendants jointly. Originally, the property Sy.No.77/1B

measuring 4 acre 12 gunta 8 ana was jointly entered in the name of plaintiffs and defendants. As per M.R.No.H95/2011-12 Sy.No.77/1B/1 measuring 2 acre 38 gunta 12 ana 80 paise land standing in the name of plaintiffs which has shown in the hand sketch map as **ABCDEFGH**. The said property is in possession and enjoyment of the plaintiffs. Towards Southern and Western side of the said property Sy.No.77/1B/2 measuring 14 gunta standing in the name of defendant No.1 which has shown in the hand sketch map as **EFIJ**. Towards Southern side of the said property Sy.No.77/1B/3 measuring 14 gunta standing in the name of defendant No.2 which has shown in the hand sketch map as **IJKL**. Towards southern side of this property Sy.No.77/1B/4 measuring 14 gunta standing in the name of defendant No.3 which has shown in the hand sketch map as **KLMN**. The defendants without the knowledge and consent of the plaintiffs trying to alienate the suit schedule properties to third parties. When they have come to know the said fact, the plaintiffs have approached the defendants and request them to sell the suit schedule properties to them for market value. Because for approaching the suit schedule properties the road is existing in the plaintiffs property. But the defendants for making loss to the

plaintiffs, they have denied to sell the suit schedule property to them and they have trying to alienate the suit schedule property to third parties. The plaintiffs are having preferential right **u/Section 22 of the Hindu Succession Act, 1956** to purchase the suit schedule property. They are willing to purchase the suit schedule property for market value, but the defendants have denied for the same. They have made out prima facie case balance of convenience lies in their favour. If the temporary injunction order is granted no injustice will be caused to the defendants. If the temporary injunction order is not granted they will be put to loss and injury. Hence, they prays to allow the IA.

3. After registration of the suit, suit summons and TI notice on IA No.I have been issued to the defendants. The defendants served with the same. In response to the same, the defendants have appeared before the Court through their counsel. The defendants have not filed their written statement. But they have filed the objection to IA No.I by denying the entire contentions of the plaintiffs and further contended that, originally the Payappa i.e. grand-father of plaintiffs and defendant No.2 and great grand-father of defendant No.1 and

3 was the owner of the suit schedule properties. The said Payappa had five sons, namely Chandrappa, Jakkappa, Punappa, Dharmanna and Rakamaji. All the above said five sons have expired. The plaintiffs are the children of Dharmanna. The defendant No.1 and 3 are the grand-sons of deceased Jakkappa i.e. the defendant No.1 is the son of late Mahipati S/o Jakkappa, the defendant No.3 is the son of late Jnyaneshwar S/o Jakkappa. The defendant No.2 is the son of Jakkappa. As per **Section 22 of the Hindu Succession Act, 1956** only if any interest in immovable property or business carried out by him or her whether solely or conjunction with others devolves upon two or more heirs specified in class I of the schedule only then there is preferential right to acquire property. In this case, the plaintiffs and defendants have not inherited the property together as class I heirs, because after the death of the Payappa, the father of the plaintiffs Dharmanna and grand-father of defendant No.1 and 3 and father of defendant No.2 Jakkappa and their three brothers inherited the property as class I heirs and subsequently their legal heirs inherited the suit properties. In the present case, the plaintiffs and defendants have not inherited the property as class I heirs. As such, they have no right of pre-emption

under Section 22 of the Hindu Succession Act, 1956.

Already partition was effected between the plaintiffs and defendants with respect of suit schedule property Sy.No.77/1B of Halyal village. The name of defendant No.1 to 3 is shown in the RTC extract of the said property to the extent of 13 gunta 8 ana each and the name of plaintiffs shown to the extent of 2 acre 34 gunta 8 ana. The plaintiffs and defendants are in separate possession and enjoyment of the suit schedule properties as per the partition. There is no prima facie case to the plaintiffs. Hence, they pray to dismiss the IA.

4. The following points arise for my consideration:

1. Whether the plaintiffs have made out *prima-facie* case?

2. Whether the balance of convenience lies in favour of plaintiffs?

3. Whether the plaintiffs will be put to irreparable loss and injury, if the order of Temporary Injunction is not granted?

4. What order?

5. My answers to the above points are as under:

Point No.1 : In the **NEGATIVE**

Point No.2 : In the **NEGATIVE**

Point No.3 : In the **NEGATIVE**

Point No.4 : As per final order for the
following: -

REASONS

6. Point No.1 to 3:- As the facts involved in point Nos.1 to 3 are interlinked together, hence they are taken up together for common consideration.

7. The present suit is filed by the plaintiffs against the defendants for the relief of declaration of preferential right and permanent injunction with respect of suit schedule properties.

According to the plaintiffs, the plaintiffs and defendants are the nearest relatives. Originally, the suit schedule properties were jointly entered in the name of plaintiffs and defendants. Originally, the property Sy.No.77/1B measuring 4 gunta 12 ana 8 paise out of it 3 acre 35 gunta was entered in the name of plaintiffs and defendants. Thereafter, as per M.R.No.H 95/2011-12 Sy.No.77/1B/1 measuring 2 acre 38 gunta 12 ana 80 paise land entered in the name of plaintiffs which has shown in the hand sketch map as **ABCDEFGH** and the said property is in possession and enjoyment of the plaintiffs. The Sy.No.77/1B/2 measuring 14 gunta is

standing in the name of defendant No.1 which has shown in the hand sketch map as **EFIG**. The Sy.No.77/1B/3 measuring 14 gunta of land is standing in the name of defendant No.2 which has shown in the hand sketch map as **IJKL**. The Sy.No.77/1B/4 measuring 14 gunta of land is standing in the name of defendant No.3 which has shown in the hand sketch map as **KLMN**. The plaintiffs are having preemptive right to purchase the suit schedule properties as per Section 22 of the Hindu Succession Act. The plaintiffs have created the road in their property for the purpose of ingress and egress. The defendants illegally using the said road for approaching their properties. When the plaintiffs have told the defendants not to use their road, then the defendants are going to alienate the suit schedule properties to the third parties. There is no legal partition has been effected between the plaintiffs and defendants at the time of certifying of M.R.No.H95/2011-12. The defendants without the knowledge and consent they are trying to alienate the suit schedule property to the third parties. When they have come to know the said fact the plaintiffs have approached the defendants and request them to sell the suit schedule property to them for market value. But they have refused for

the same. The plaintiffs are having preferential right **under Section 22 of the Hindu Succession Act, 1956** to purchase the suit schedule properties for market value. But the defendants have denied for the same. As such, they have filed the present suit.

8. The contention of the defendants is that, the plaintiffs and defendants are not the class I heirs as per **Section 22 of the Hindu Succession Act, 1956**. The only class I heirs of the schedule are entitled to claim the relief of preferential right. Already partition has been effected between the plaintiffs and defendants with respect of suit schedule properties. As per the partition, the plaintiffs and defendants are in possession and enjoyment of the suit schedule properties. The plaintiffs have filed the false suit. Hence, the suit is not maintainable. As such, they pray to dismiss the IA.

9. I have perused the material available on record. At this stage, the plaintiffs produced RTC extract of suit item No.1 Sy.No.77/1B/2, suit item No.2 Sy.No.77/1B/3 and suit item No.3 Sy.No.77/1B/4 measuring 14 gunta. On going through the said documents prima facie it appears that, the

said properties are jointly standing in the name of defendant No.1 to 3 respectively. The plaintiffs produced RTC extract of Sy.No.77/1B measuring 4 acre 12 gunta 8 ana for the year 2012-13. On going through the said document prima facie it appears that, during the said period the said property jointly standing in the name of plaintiffs and defendant No.1 to 3. The plaintiff produced M.R.No.H95/2011-12. As per the said mutation entry prima facie it appears that, Sy.No.77/1B divided between plaintiffs and defendants and 2.34.08.00 acre land entered in the name of plaintiff No.1 and 2 jointly, 0.13.08.00 acre land entered in the name of defendant No.2 and 0.13.08.00 are land entered in the name of defendant No.3. The said mutation entry was effected in the year 2011-12. The plaintiffs produced RTC extract of Sy.No.77/1B/1 measuring 2 acre 38 gunta 12 ana 80 paise. On going through the said document prima facie it reveals that, the said property jointly standing in the name of plaintiffs. Further the plaintiffs produced survey sketch of the suit schedule properties.

10. It is the suit for declaration of preferential right to purchase the suit schedule properties and relief of permanent

injunction filed by the plaintiffs against the defendants.

Section 22 of the Hindu Succession Act, 1956 provides as under.

22. Preferential right to acquire property in certain cases.—

(1) Where, after the commencement of this Act, an interest in any immovable property of an intestate, or in any business carried on by him or her, whether solely or in conjunction with others, devolves upon two or more heirs specified in class I of the Schedule, and any one of such heirs proposes to transfer his or her interest in the property or business, the other heirs shall have a preferential right to acquire the interest proposed to be transferred.

(2) The consideration for which any interest in the property of the deceased may be transferred under this section shall, in the absence of any agreement between the parties, be determined by the court on application being made to it in this behalf, and if any person proposing to acquire the interest is not willing to acquire it for the consideration so determined, such person shall be liable to pay all costs of or incident to the application.

(3) If there are two or more heirs specified in class I of the Schedule proposing to acquire any interest under this section, that heir who offers the highest consideration for the transfer shall be preferred. Explanation.—In

this section, “court” means the court within the limits of whose jurisdiction the immovable property is situate or the business is carried on, and includes any other court which the State Government may, by notification in the Official Gazette, specify in this behalf.

As per the above provisions of law, when the interest in the immovable property devolved by intestate succession upon two or more heirs specified in Class I of the schedule then it is between the Class I heirs inter se they have right of pre-emption. On going through the above provisions of law, it is clear that for claiming the relief **under Section 22 of the Hindu Succession Act, 1956** the plaintiffs first of all to prove that the plaintiffs and defendants are the class I heirs and they succeeded the suit properties as class I heirs. If the plaintiffs prima facie shows the said fact then only they are entitled for the relief of temporary injunction. In the present case on hand, in Para No.3 of the plaint the plaintiffs stated that, they are the nearest relatives. The plaintiffs have not specifically pleaded the proper relationship of the plaintiffs and defendants. They have not shown any proper genealogy of the plaintiffs and defendants to show that the plaintiffs and defendants are the class I legal heirs for claiming the right

under Section 22 of the Hindu Succession Act. At this stage, they have not produced any documents before the Court to show that, the plaintiff and defendants are the class I legal heirs for claiming the right **under Section 22 of the Hindu Succession Act.** The plaintiffs only pleaded that, they are the nearest relatives. The said contentions is not suffice to grant the relief under the above said provisions of law without any documents to show that, the plaintiffs and defendants are the class I legal heirs to claim the relief under the above said provisions of law.

11. The contention of the defendants is that, originally the suit schedule properties belongs to grand-father of plaintiffs and defendant No.2 and great grand-father of defendant No.1 and 3 Payappa. The said Payappa had five children namely, Chandrappa, Jakkappa, Punappa Dharmanna and Rakamaji. The Jakkappa had three children i.e. defendant No.2, father of the defendant No.1 late Mahipati and father of defendant No.3 late Jnyaneshwar. The plaintiffs are the children of late Dharmanna. The plaintiffs have not denied the said relationship shown by the defendants. On the other hand, they have not produced any documents before

the Court to show that, the plaintiffs and defendants are the class I legal heirs. Further they have not produced any documents before the Court to show that, the genealogy shown by the defendants in the objection is not correct. The plaintiffs not pleaded that, whether the said suit schedule properties are the ancestral properties of plaintiffs and defendants and who is the propositus of plaintiffs and defendants. Further the plaintiffs have not shown the proper genealogy of their propositus.

12. As already stated above there is no pleading in the plaint to show the correct relationship of the plaintiff and defendants. There is no pleading in the plaint that, from whom and how they have acquired or succeeded or inherited the suit schedule properties. The plaintiffs not pleaded the proper relationship of the parties to show that, the plaintiff and defendants are the class I legal heirs for claiming the right under Section 22 of the above said Act. On the other hand, the defendants shown the relationship and the genealogy in the objection which is not denied by the plaintiffs by filing any counter objection or by producing any documents to show that the genealogy explained by the defendants is not correct. On going through the same prima

facie it appears that, class I heir of the propositus Payappa are his children i.e. late Chandrappa, father of defendant No.2 and grand-father of defendant No.1 and 3 late Jakkappa, late Punappa, father of plaintiffs late Dharmanna and Rakamaji. Neither the plaintiffs nor the defendant No.1 to 3 come within the purview of class I heirs of Payappa. As per the documents produced by the plaintiffs prima facie it appears that, the plaintiffs succeeded to the property of their father by intestate succession. The defendant No.2 succeeded to the property of his father late Jakkappa and defendant No.1 succeeded to property of his father Mahipati and defendant No.3 succeeded to the property of his father late Jnyaneshwar. The defendant No.2 succeeded the property of his father late Jakkappa along with father of defendant No.1 late Mahipati and father of defendant No.3 late Jnyaneshwar. The said Jakkappa is the brother of father of the plaintiffs late Dharmanna. Therefore, in between plaintiffs and defendants the question of right of pre-emption would not arise and the provisions of Section 22 of the Hindu Succession Act do not apply.

13. In the reported decision **2017 SCC Online Kar.6647 (Balasaheb Annasaheb Jasud vs. Anirduha Vilas Kurbetti)** the **Hon'ble High Court of Karnataka** in **Para No.22** of the said decision held as under.

Substantial question of law No.2:

18. Question is whether the plaintiff can exercise preferential right under [Section 22](#) of Hindu Succession Act. The pedigree shows that plaintiff is the son of one Annasaheb, who is the brother of Tukaram. If [Section 22 \(1\) of Hindu Succession Act](#) is read, it becomes very clear that for a person to claim preferential right, the interest in any immovable property of an intestate should devolve on two or more heirs specified in Class - I of the schedule and anyone of such heirs should propose to transfer his or her interest in the property. Even this preferential right can be claimed after the transfer of the property subject to limitation. In this case, the Class I heirs of the propositus Vittal Jasud are Tukaram, Annasaheb and Housabai. The wife and son of Tukaram sold away their undivided share to defendant No.1 by executing sale deed on 17.10.1984. On that date, the plaintiff's father Annasaheb was very much alive. He did not question the sale. Supposing that Tukaram had sold away the property, Annasaheb being Class-I heir, could have questioned it. Here, neither the plaintiff nor the defendants 2 and 3 do come within the

purview of Class-I heirs of Vittal Jasud. Even if plaintiff succeeds to the property of his father by intestate succession, he gets no right under Section 22 of the Hindu Succession Act; he doesn't step into the shoes of his father to call himself as Class-I heir. In a situation like this, it is useful to place reliance upon the judgment of this Court in the case of Ganeshappa (deceased by LRs) V/s. Krishnamma and others (AIR 2005 KAR 160). In this decision it is held as below:-

"4. The provision of the Section declare that when the interest in the immovable property devolved by intestate succession upon two or more heirs specified in Class I of the schedule then it is between the Class I heirs inter se they have right of pre-emption. In the present case, the succession for the first time opened after the death of propositus Venkataramanappa. His sons as Class-I heirs succeeded to the property. The first defendant did not succeed to the property as Class-I heir of Venkataramanappa along with the plaintiff and his brothers. The first defendant succeeded to the property only after the death of her husband, who is the brother of the plaintiff. The plaintiff could have invoked right of pre-emption, if Chinnappa his brother had sold the property. But in the instant case, it is the widow of Chinnappa, who

inheriting the property after the death of her husband sells the property. Therefore, in between the plaintiff and first defendant the question of right of pre-emption would not arise and provisions of Section 22 of the Hindu Succession Act do not apply. In that view, the claim of right of pre-emption is untenable. The finding of the Trial Court is sound and proper. Accordingly, the appeal dismissed.

The above said decision is clearly applicable to the case on hand. On going through the entire material available on record I am of the opinion that the plaintiffs have failed to made out prima facie case and balance of convenience lies in their favour. If the Temporary Injunction order is granted injustice will be caused to the defendants. If the Temporary Injunction order is not granted no injustice will be caused to the plaintiffs. On the basis of above reasons and discussions I hold **Point No.1 to 3** in the **NEGATIVE**.

14. Point No.4 :- For the aforesaid reasons and discussions made above, I proceed to pass the following:-

ORDER

I.A.No.I filed by the plaintiffs under
Order 39 Rule 1 & 2 of CPC is hereby
dismissed.

Ex-parte temporary injunction order is
hereby vacated.

*(Dictated to the Stenographer, transcribed and computerized by her, corrected by me, and
then pronounced in the open court on this the **16th day of December 2023.**)*

Sd/-

(SAYED MOHIUDDIN URF KHAWAJA PEERAN)

III ADDITIONAL CIVIL JUDGE & JMFC., ATHANI.