

KABG300000722018



**IN THE COURT OF SENIOR CIVIL JUDGE,
BAILHONGAL, AT: BAILHONGAL.**

PRESENT:

**Sri. Ravi Babu Chawan,
B.A.LL.B (SPL.)
Senior Civil Judge, Bailhongal..**

O.S. No. 16/2018

Dated this the 9th day of July, 2024

1) Shri. Basappa Basavantappa Pattanashetti,

.....Plaintiff.

Vs.

1) Shri. Yallappa Basavantappa
Pattanashetti and others.

.....Defendants.

PARTIES TO THE IA No.24

1) Shri. Basappa Basavantappa Pattanashetti,

Age: 66 years, Occ: Agriculture,
Occ: Pattihal K.B. Tq: Bailhongal,
Dist: Belagavi.

.....**Applicant/Plaintiff.**

(By Sri. S.B.P., Advocate)

Vs.

1) Shri. Yallappa Basavantappa Pattanashetti,
Age: 66 years, Occ: Agriculture,
Occ: Pattihal K.B. Tq: Bailhongal,
Dist: Belagavi.

2) Shri. Gangappa Basavantappa Pattanashetti,
Age: 58 years, Occ: Service,
Occ: Pattihal K.B. Tq: Bailhongal,
Dist: Belagavi.

3) Shri. Virupxappa Basavantappa Pattanashetti,
Age: 45 years, Occ: Agriculture,
Occ: Pattihal K.B. Tq: Bailhongal,
Dist: Belagavi.

4) Shri. Gurusiddappa Basavantappa Pattanashetti,
Age: 42 years, Occ: Teacher,
Occ: Pattihal K.B. Tq: Bailhongal,
Dist: Belagavi.

5) Smt. Basavannevva W/o Basappa Hakari,
Age: 70 years, Occ: Household work,
Occ: Hirebellikatti Tq: Kittur/Bailhongal,
Dist: Belagavi.

6) Smt. Shanthavva W/o Balappa Karikatti,

Age: 56 years, Occ: Household work,
Occ: Pattihal K.B. Tq: Bailhongal,
Dist: Belagavi.

7) Smt. Thayavva W/o Shivappa Sarabani,
Age: 54 years, Occ: Household work,
Occ: Aravalli, Tq: Bailhongal,
Dist: Belagavi.

8) Smt. Kasturevva W/o Basanagouda Patil,
Age: 51 years, Occ: Household work,
Occ: Chachadi, Tq: Savadatti,
Dist: Belagavi.

9) Shri. Balappa Channabasappa Karikatti
Age: 60 years, Occ: Agriculture,
Occ: Pattihal K.B. Tq: Bailhongal,
Dist: Belagavi.

10) Smt. Shrikantavva W/o Shantinah Huddar,
Age: 70 years, Occ: Household work,
Occ: Patagundi, Tq: Gokak,
Dist: Belagavi.

11) Shri. Ulavappa Veerabhadrapa Gurulakatti,
Age: 60 years, Occ: Agriculture,
Occ: Pattihal K.B. Tq: Bailhongal,
Dist: Belagavi.

12) Shri. Shankaragouda Devendrappa Patil,
Age: 42 years, Occ: Agriculture,
Occ: Pattihal K.B. Tq: Bailhongal,
Dist: Belagavi.

13) Smt. Bhimarethavva W/o Nagappa

Maningappanavar (Kolakar),
Age: 55 years, Occ: Household work,
Occ: Pattihal K.B. Tq: Bailhongal,
Dist: Belagavi.

14) Smt. Lalitha C/o Maddeppa
Maningappanavar (Kolakar),
Age: 32 years, Occ: Household work,
Occ: Pattihal K.B. Tq: Bailhongal,
Dist: Belagavi.

15) Shri. Channayya Basalingayya Pujar,
Age: 32 years, Occ: Agriculture,
Occ: Pattihal K.B. Tq: Bailhongal,
Dist: Belagavi.

16) Smt. Shaila W/o Dundappa Katti (Halemani)
Age: 55 years, Occ: Household work,
Occ: Pattihal K.B. Tq: Bailhongal,
Dist: Belagavi.

17) Shri. Balappa Basappa Hunashikatti
Age: 45 years, Occ: Agriculture,
Occ: Pattihal K.B. Tq: Bailhongal,
Dist: Belagavi.

18) Smt. Shaila W/o Ravi Pattanashetti,,
Age: 23 years, Occ: Household work,
Occ: Basavanagar 4th cross,
Tq: Bailhongal, Dist: Belagavi.
Now at: Smt. Shaila D/o Ulavappa Sarabani,
R/o: Nadaf Oni Kenganur Aravalli,
Tq: Bailhongal, Dist: Belagavi.

.....**Opponents/ Defendants.**

(By Sri. S.V.S.,/C.S.C., Advocate for D1,3,4)
(By Sri. V.G.K., Advocate for D2,)
(By Sri. S.Y.P., Advocate for D35 to D8)
(By Sri. S.J.B., Advocate for D9,)
(By Sri. V.B.A., Advocate for D10,)
(By Sri. R.S.D., Advocate for D11 to D17,)
(By Sri. S.M.M., Advocate for D18,)

ORDER ON I.A.No.24

This is an application filed Under Order XXXIX, Rule-1 and 2 read with Section 151 of CPC by plaintiff seeking temporary injunction restraining the defendant No.1, 3 and 4 from construction of residential houses, installation of electricity poles and water facility in agricultural land RS. No.188/1 and restrained them from illegally selling the soil in RS. No.56 to make new roads.

2. In the affidavit annexed to I.A. plaintiff's SPA holder averred that, the defendant No.3 illegal trying to sell the land in guntas to the purchaser for the purpose of construction of residential houses in agricultural land bearing RS. No.188/1 measuring 1

acre 23 guntas of Pattihal village by installing electricity poles and pipes for water facility illegally. It is further stated that the defendant No.1, 3 and 4 are illegally selling the soil of the land bearing RS. No.56 for making roads in such a way that it is difficult to carry out daily agricultural activities. Hence, prayed to allow the I.A.

3. Per contra, defendant No. 1, 3 and 4 have filed, their objections contending that the I.A is not maintainable. The land bearing RS No.181/1 measuring 1 acre 23 guntas is not the joint family property and it is the self acquired property of defendant No.3. The Plaintiff by falsely including the aforesaid land as joint family property claiming bogus claim on it. It is further contended that as per the report of the court commissioner in the land RS. No.188/1 people have been living there and houses have been built in the said land and as per the order of the Government and in accordance with the village Panchayat repair works like road, electricity connection, water supply etc., were done there years before the plaintiff filed the suit. The defendant No.11 to 18 have purchased the said land and

divided amongst them in guntas and they are living there by building houses. At this stage the defendant No.3 has not sold any piece of land in RS No.188/1 to anyone else for construction a new residential house. The plaintiff at this stage has filed the present interim application with the intention of disturbing the defendants who are living there by constructing the residential houses in land RS No.188/1. These defendants denied that selling of the soil in RS. No.56 for making roads and doing non agricultural land in the land RS. No. 56 of Pattihal K.B village. Among all the above and other grounds they prayed to dismiss the I.A.

4. Heard both sides.

5. The following points would arise for my consideration:

POINTS

1) Whether the plaintiff has made out prima facie case ?

2) Whether balance of convenience lies infavour of the plaintiff ?

3) Whether the plaintiff would be put to irreparable loss or injury in the event of the IA is not allowed ?

4) What order ?

6. My findings on the aforesaid points is 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

7. **Point No.1:-** The plaintiff has contended that he has filed suit for partition and separate possession in respect of suit properties. He has further stated that he is in joint possession of suit properties along with defendants No.1 to 8. Records show that the court commissioner has been appointed for local inspection in respect one of the suit land bearing RS. No.188/1. Accordingly, court

commissioner has visited the spot and submitted his report. The said commissioner's report has not been objected either of the party to suit. According to the court commissioner's report there are six residential houses, two houses are at the stage of completion, two sheds, cow dung pits, haystacks situated in the land RS. No.188/1. Now the plaintiff moved this application seeking temporary injunction restraining the defendant No.1, 3 and 4 from the installation electric poles, water connection and illegal selling the soil in RS. No.56 of Khodanapur village. On perusal of court commissioner's report the defendants No. 11 to 18 appear to be actually residing in the suit land bearing RS. No.188/1 by constructing their respective houses. The defendants have denied the joint family nature of the property RS. No.188/1 and illegal selling the soil in land RS No.56 for making formation of new roads. Initially in the plaint the plaintiff has not pleaded that the amongst the suit properties land bearing RS No.188/1 was purchased in the name of the defendant No.3 out of joint family nucleus. However subsequently plaintiff has inserted facts that the landed property RS No.188/1 was purchased in the name of defendant No.3 out of joint family

nucleus by way amendment of the plaint. But he has not produced any document in this regard. The question so as to whether the landed property bearing RS No.188/1 was purchased in the name of defendant No.3 out joint family nucleus or it is the self acquired property of defendant No.3 is a matter of trial. On the other hand revenue extracts and sale deed of the suit RS No.188/1 would show the name of defendant No.3. Therefore at present the plaintiff has not made out prima-facie case regarding their joint possession of suit property land bearing RS No.188/1. Therefore point No.1 is answered in negative.

8. **Point No.2 and 3:-** Since these issues are inter connected to each other they are taken up together for discussion.

Admittedly defendant No.1, 3 and 4, 11 to 18 are residing in the land bearing RS No.188/1. On perusal of records no photographs are produced by plaintiff to show that works of construction of new road is going on and the defendant No.1, 3 and 4 have dig the land for the excavating soil in the

agricultural land bearing RS. No. 56 for formation of new roads to the residential houses in RS No.188/1. Further the plaintiff has not produced any piece of paper regarding installation of new electric poles and water supply pipes to the existing houses in the land RS No.188/1. As discussed above there is commissioner's report regarding exiting the residential house in the land RS. No188/1 and said residential buildings are required good electricity and water supply. If the defendants are restrained from carrying out necessary repair, electricity connection and water supply the suit houses may not be conducive for living. Thus the balance of convenience is not in favour of the plaintiff. Rather the inconvenience caused to defendants will be greater. If injunction is granted they will be put to irreparable loss and injury. Accordingly point No.2 and 3 are answered in negative.

9. **Point No.4:** No doubt the inconvenience of the defendants should be protected but they should not be permitted to reap any undue advantage from the concession shown by this Court. The plaintiff has

filed this suit for partition and separate possession. The defendants if in case repair the residential houses and get electricity connection and water supply exceeding their share, they are not entitled to claim any preference at the time of allocation during FDP proceedings. With these observations, for the findings given to point No.1 to 3 this Court deems to fit to pass the following:

ORDER

I.A.No. 24 filed under Order 39 Rule 1 and 2 read with Section 151 of C.P.C. is hereby **dismissed.**

Cost shall follow the suit.

(Dictated to the stenographer direct on computer Typed by him, corrected and pronounced in the open Court on 9th day of July, 2024))

Senior Civil Judge, Bailhongal.

