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IN THE COURT OF PRINCIPAL SENIOR CIVIL JUDGE,
CHIKODI

: PRESENT :

SHRI. PATIL HARISH RANGANAGOWDA
BA. LL.B.(Hon's)
Prl. Senior Civil Judge, Chikodi.

23rd DAY OF SEPTEMBER - 2024

OS NO.165/2024

BETWEEN :

1. **Smt. Kamala W/o. Nemanna Kesti**
and others
... Plaintiffs
(Miss. M. V. Patil, Adv.,)

AND :

1. **Sri. Surendra Bharamu Kesti**
and another
... Defendants
(Sri. P. B. Utture, Adv.,)

:: ORDERS ON IA NO.I ::

The plaintiffs have filed IA No.I u/O.39 Rule 1 and 2 of CPC seeking to restrain the defendant Nos.1 and 2 from ousting them from the suit property.

2. Facts of the case are unfurled here under:

The plaintiffs have filed this suit seeking for the relief of partition and separate possession of their share over suit property by contending that they themselves and defendants are members of Hindu undivided joint family and suit properties are joint family properties of themselves and defendants. According to them, their fathers by name **Bharamu Appanna and Nemanna** have had jointly purchased the suit property under registered sale deed dated:03.09.1956. They died without dividing the property leaving behind themselves and defendants. The plaintiff Nos. 1 to 6 are the wife and children of Nemanna, the plaintiff No.7 is the son of Appanna and defendant Nos.1 and 2 are sons of Bharamu. Therefore they jointly succeeded the

property from said three joint purchasers and jointly growing sugarcane, jowar and soyabean crop in the said property. There is no division among themselves and defendants. The defendants are trying oust them from the suit property. Therefore they were perforce to file this suit.

3. The defendants appeared through their counsel and filed their written statement. They admit the factum of joint purchasing of property by Bharamu, Appanna and Nemanna. They in turn contend that the partition has already taken place during life time of said Bharamu, Appanna and Nemanna about sixty eight years back. The defendant Nos.1 and 2 have dug well and removed the hill rock in their property. They have developed the land. The plaintiffs are having eagle eye on the said development of property have filed this false suit alleging non-division of property. They further pleaded that the plaintiff No.7 has also dug separate well and drawn pipeline to his property. He is also growing commercial crops like sugarcane. The land allotted to plaintiff Nos.1 to 6 is not having any source of irrigation.. The plaintiff Nos.1 to 6 are growing

non-irrigated crops. Therefore there is no truth in the case of plaintiffs. They have also contended that recently the dispute with one Smt. Rajamati Tatyasab Nasalapure who is the owner of other portion of suit survey number has ended in compromise by executing sammati patra. In the said sammati patra they have lost some portion of land. Therefore there is no truth in the case of plaintiffs. Hence, they seek to dismiss the suit.

4. The plaintiffs have filed IA No.1 u/O.39 Rule 1 and 2 of CPC seeking to restrain the defendants from ousting them from the joint possession, enjoyment and vahivat of suit property till disposal of suit. The defendants have filed objections to the said application by taking similar stand as taken in the plaint. Heard both sides.

5. Having heard and having perused the material on record, the following points would arise for my consideration.

1. Whether the plaintiffs made out prima-facie case for grant of injunction in respect of IA No.1 ?

2. Whether the plaintiffs prove that the balance of convenience lies in their favour in respect of IA No.1 ?

3. Whether the plaintiffs prove that if injunction is refused, they would be put to irreparable loss which cannot be compensated in terms of money ?

4. What order ?

6. Having heard and having perused the material on record, my findings to above 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 the final order,
for the following:**

:: REASONS ::

7. Point Nos.1 to 3:- In order to avoid repetition of facts, these points are taken together for common consideration. The pleadings of parties indicate following undisputed facts:

a. It is not in dispute that the plaintiffs and defendants are the relatives to each other through a common ancestor by name Gundappa Kesti. The said Gundappa Kesti had four sons namely Tavanappa, Bharamu, Appanna and Nemanna.

b. It is not in dispute that the plaintiff Nos.1 to 6 are the heirs of Nemanna. The plaintiff No.7 is the son of Appanna and defendants are the sons of Bharamu.

c. It is also not in dispute that the three sons of Gundu namely Bharamu, Appanna and Nemanna have had purchased the suit property under registered sale deed dated:03.09.1956.

d. The only dispute is in regard to existence of joint claim of plaintiffs and defendants over the said property. The plaintiffs contend that the said properties are not yet been divided. The defendants have contended that the said properties have been divided about sixty eight years back. Therefore there are two competing facts forwarded in the pleadings of parties in regard to existence of joint claim. Therefore with this back drop of disputed and undisputed fact, I proceed to examine the material placed by the parties.

8. The plaintiffs have buttress their case by placing reliance on copy of sale deed, mutations, old record of rights, new record of rights, copies of Aadhar cards, disability certificate, electricity bill and photographs. On the other hand, the defendants have produced original sale deed, note book containing accounts of expenditure made in regard to digging of well, endorsement of Syndicate Bank regarding obtaining of loan for the purpose of digging well, report of Geologist,

receipts, sanction letter of KEB, compensation order passed by Tahasildar and Deputy Commissioner regarding compensation for failure of well, share transfer letter, electricity bill, pumpset purchase bill, sugarcane weighment slip, house sanctioned letter, PT sheet, phodi documents, Aakar band, copy of sammati patra and phodi division.

9. In order to grant the relief of interim injunction as sought by the plaintiffs, the court has to prima-facie infer that the plaintiffs and defendants are jointly cultivating the suit property and jointly enjoying the property. The plaintiffs have not sought the mere relief of injunction from dispossessing from the suit property. They sought the relief of injunction restraining the defendants from ousting them from the joint possession, enjoyment, vahivat of suit property. Therefore keeping in mind the said interim request made by plaintiffs, I proceed to examine the document.

10. From the revenue records placed by the plaintiffs it reveals the joint name of plaintiffs and defendants over the suit property. The Aakar band is also revealing the original

extent of property. The PT sheet and survey sketch produced by defendants indicate joint extent of property. Therefore the plaintiffs have contended that all the public revenue documents indicate that the suit property is jointly existing between plaintiffs and defendants. Therefore they have claimed that there is no division in the suit property. On the other hand, the defendants have also placed considerable material to show that the father of defendants by name Bharamu had independently obtained loan to dug well in the suit property. On account of failure of well, the loan was waived off by the Government by virtue of circular dated:30.08.1984. The plaintiffs have also mentioned in the plaint that the well existing in the suit property at the time of purchase of property was already extinguished.

11. The entire claim of plaintiffs appears to be on the well and borewell situated in the property. The defendants have produced abandoned document to show that the well dug in the suit property was dug by the father of defendants. He has obtained electricity connection to the said well. The documents produced by plaintiffs also indicate that a

separate motor and pumpset have been purchased by the defendants. The sugarcane weighment receipts also standing in the name of defendants. The plaintiff No.7 has also produced electricity bill which also shows that he has also obtained independent electricity connection to the suit property. Therefore it create cloud over the claim of plaintiffs regarding joint cultivation, enjoyment and vahivat of suit property between plaintiffs and defendants. Though the defendants have not properly mentioned about the division, the other documents tendered by them such as separate electricity bill, sugarcane weighment receipts, house sanctioned letter prima-facie indicate that the parties to lis are in separate enjoyment of their strip of property. Therefore the sugarcane weighment receipts, electricity bill create cloud over the joint record of rights in regard to joint cultivation and enjoyment of property. Therefore, I hold that merely on the basis of joint revenue records the joint cultivation, joint enjoyment and joint vahivat of property cannot be inferred at this stage. It is not the case of defendants that the plaintiffs are not the owners and in

possession of suit property. According to them, the plaintiffs are enjoying the separate strips in the suit property. Therefore the defendants themselves admitted the possession and enjoyment of property by the plaintiffs. The question to be examined in the trial is regarding joint cultivation, enjoyment and vahivat of property. The said question requires to be examined in the light of documents tendered by defendants. If the blanket injunction is issued, it would certainly create an hostile atmosphere between the parties. It would again leads to driving the parties to the other litigation. Therefore in my opinion when the possession of plaintiffs over the suit property to the extent of their share is not denied and disputed by the opposite party the issuing of injunction against him would wholly uncalled for. **Hence, I hold above point Nos.1 to 3 in the Negative.**

12. Point No.4:- In the light of aforesaid findings on the above said points, I proceed to pass following:

ORDER

The IA No.I filed by plaintiffs u/O.39 Rule 1 and 2 R/w Sec.151 of CPC is hereby rejected.

It is made it clear to the parties that the rejection of request of plaintiffs cannot be treated an hindrance to the enjoyment of portion of property by the plaintiffs.

(Dictated to the stenographer directly over the computer, typed by her, corrected, signed and then pronounced by me in the open court on this the 23rd day of September, 2024).

**(Patil Harish Ranganagowda)
Prl. Senior Civil Judge,
Chikodi.**

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