

IN THE COURT OF THE I ADDITIONAL CIVIL JUDGE AND
J.M.F.C., CHIKODI.

Present: Ashok R H
I Addl. Civil Judge & J.M.F.C.,
Chikodi.

Dated this the 24th day of January, 2022

O.S.No.205/2017

Plaintiffs: 1) Bebitai Baban Kamble
R/o: Chandur, Tal: Chikodi,

(By Shri B.R. Yadav, Advocate)

//Vs//

Defendant: 1) Yallappa Mayappa Kamble
R/o: Chandur, Tal: Chikodi,
and others.

(By Shri. D.B. Peerjade, Advocate for D.1)

I.A.No.V

Applicant/Ori.Defendant:

1) Bebitai Baban Kamble

//Vs//

Opponents/Proposed Legal heirs Defendant No.1 & 2:

Def. 1A. Sumitra Yallappa Kamble &
Def. 1B. Sunil Dinakar Kamble

ORDERS ON IA.No.V

The plaintiff has filed this application under Order XVII Rule 4 R/w Section 151 of CPC seeking permission to bring the legal heirs of deceased defendant no.1.

2. In the affidavit, it is stated that the defendant no.1 has died on 10.06.2018 leaving behind his wife and 03 sons. They are the legal heirs of deceased defendant no.1. Except them there are no legal heirs. The right to sue and cause of action survives against the Lrs of defendant no.1. Hence it is prayed to allow the application.

3. The defendant no.1A and 1B have filed objections contending that it is true that the defendant no.1 has left behind behind his wife and his sons. It is contended that 20 years back, the defendant no.1 A i.e., Smt Sumitra Yallappa kamble and Shobha W/o Dinkar Kamble have taken family gold of two tolas each and orally given up their share in the suit property and other properties of the family in favour of defendants no.1 to 4. The defendant no.1 has got no right, after the partition that is effected in between the defendants no.1 to 4 and accordingly the decree has been passed in OS.No.269/2014 before the Prl C.J and JMFC., Chikodi. As per the said partition, the properties, including the suit property has been absolutely and exclusively given to the respective defendants no.2 to 4 as per their respective

shares. Since then, the defendants no.2 to 4 are the absolute owners in possession of the respective properties. The plaintiff has filed false suit seeking the relief of bare injunction alleging obstruction and disturbance. The present suit is one for bare injunction and is in person i.e., in personal capacity against the defendants no.1 to 4. There is no allegation against the present proposed legal heirs. Thus it is prayed to reject the application.

4. Heard both the learned counsels. The points that would arise for the consideration of this Court are as under:

POINTS

- 1 Whether the application deserves to be allowed?
- 2 What order?

5. The answers of this court to the above points are as under:

Point No.1 : In the Negative

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

REASONS

6. **Point No.1:** The plaintiff has filed this suit seeking the relief of Perpetual Injunction restraining the defendants and men on their behalf from trespassing upon and taking up any construction work over the suit property or in any way

disturbing, obstructing or interfering with the use and enjoyment of plaintiff over the suit property. Thus, at threshold it is taken into consideration that the plaintiff has filed the suit seeking the relief of injunction simpliciter against the defendants in their personal capacity.

7. It is well settled principle of law that decree of Injunction runs against the person and not the property. Furthermore, the cause of action for the plaintiff to file the present suit has arose only as against the defendants herein. It can in no manner be held that cause of action is extended to their legal representatives. In *Asha Batra V/s Dharam Devi* 110 (2004) DLT 662, it is held that a suit for injunction would come to an end on the death of the defendant as plea of forcible dispossession set up by the plaintiff would become an illusion on the death of the defendant. In the instant case also on the death of the defendant no.1, the plaintiff's plea of alleged disturbance and obstruction with his alleged possession of the property, by the defendant no.1 also comes to an end.

8. No doubt, a decree of injunction already obtained against a defendant could be enforced on legal heir of the defendant on his death. But when the death occurs during the pendency of the case, it cannot be held that there is a cause of action as against the legal heirs of deceased defendant. Right to sue does not survive as against the legal heir of the deceased defendant. Thus, this court is of the considered opinion that

the contention of the plaintiff that the cause of action survives and that the legal heirs of the deceased defendant no.1 be brought on record is liable to be rejected. Hence this court has answered Point No.1 in the Negative.

9. **Point No.2:** In view of answer to Point No.1, this court proceeds to pass the following

ORDER

IA.No.V filed by the plaintiff under order Order XVII Rule 4 R/w Section 151 of CPC is hereby rejected.

No order as to costs.

(Dictated to the Stenographer, transcribed and typed by her, corrected and then pronounced by me in the Open Court on this 24th day of January, 2022)

Sd/-

(Ashok R.H)

I Addl. Civil Judge & JMFC., Chikodi.

