

**IN THE COURT OF I ADDITIONAL SENIOR CIVIL JUDGE,
GOKAK AT GOKAK**

PRESENT

**SRI SATISH J. BALI, B.Com. LL.M.
I ADDITIONAL SENIOR CIVIL JUDGE,
GOKAK**

DATED:02nd day of March-2018

ORIGINAL SUIT No.290 of 2012

Between:-

1.Sri. Konappa S/o. Irappa Ankadavar

----Plaintiff

And:-

1. Sri. Irappa S/o. Konappa Ankadavar and others

---Defendant

I.A.No.17 and 18

1.Smt. Janaki W/o. Basavaraj Ankadavar

2.Bhagyashree D/o. Basavaraj Ankadavar

----Defendants No.15 & 16/Applicants

(By Sri V.R.L, Adv.)

Vs

1.Sri. Konappa S/o. Irappa Ankadavar

--Plaintiff

(By Sri.S.V.D., & R.S.K., Advs.)

ORDERS ON I.A.Nos.17 & 18

The defendant Nos.15 to 17 have filed these I.A's seeking for a maintenance of Rs.20,000/- and Rs.25,000/- to them per month from plaintiff, defendant Nos.1 to 3, 7, 10, 11 and 19.

2. Both the applications are accompanied by affidavit wherein defendant Nos.15 and 16 stated that defendant Nos.16 and 17 are her children in the present suit which is falsely filed by the plaintiff. It is submitted that the suit properties are ancestral joint family properties and defendant No.1 is her father-in-law having sons defendant Nos.2,3,7,10,11 and 19. Her deceased husband Basavaraj was also the son of defendant No.1 who died in the year 2004 leaving behind her and defendant No.16 to 17 as his legal heirs.

3. It is submitted that, defendant No.16 is medical student and defendant No.17 is mentally weak and not doing any work. After the death of her husband Basavaraj, other defendants have taken all the golden ornaments provided by her parents at the time of

marriage. It is submitted that, the defendants have taken business of her husband and also insurance policy amount which kept their bank account. The names of other defendants are appearing in the record of rights of suit schedule properties as joint owners and enjoying joint share of her deceased husband about Rs.100 lakhs per month without paying anything to herself and defendant No.16 and 17 for their livelihood.

4. It is further submitted that the family of the plaintiff and defendants respectable and wealthy family. In order to maintain dignity and standard of life maintenance amount is required to meet for good food, medicine suitable cloths and to have all amenities in the life. It is submitted that, maintenance amount is required for the treatment of defendant No.17 and to continue the further studies of the defendant No.16. It is alleged that the huge money urged by the plaintiff and defendants by using and enjoying her deceased husband's property and insurance money and her golden ornaments which are in the custody of defendant No.3. It is submitted that, in order to meet out their daily expenses maintenance

amount is required. It is alleged that the other defendants driven out them to a small room and illiterate for which a complaint under Domestic Act, is filed. Hence, the other defendants having huge income able to pay maintenance as prayed. Therefore, prayed to allow the applications.

5. The application opposed by the defendants by filing their objections contending that the facts stated in the application are false, frivolous and vexatious. Defendant No.1 submitted that the policy amount of defendant No.15 was kept jointly in her name and also in the name of defendant No.2. It is submitted that the amount from LIC is also kept in the account in the name of plaintiff and defendant No.16 in a postal department having maturity of Rs.30 lakhs. It is submitted that, he is a 88 years old and eye-cities weak. He is completely depending upon defendant No.11 who is looking after providing medicine etc., hence, he is a not in a position to earn anything in his individual capacity and cannot pay maintenance to the defendant Nos.15 to 17. It is submitted that, defendant Nos.11 to 14 are also not

liable to payment under the law. Hence, prayed to dismissed the applications with costs.

6. Defendant No.2 to 5, 7 to 9 and 19 filed their objections contending that the present application are residing with other defendants in house property bearing VPC No.3308/A/B at Gokak. The name of the deceased Basavaraj is also appearing along with his brothers in the records of above properties. These two properties form one property in which defendant No.2 to 5, 7 to 9 and 19 are residing.

7. It is submitted that, the suit properties in which they are doing in business and residing are all their self acquired properties are separate properties in which other members are not having any kind of right. It is submitted that, there is no joint family properties and all the business was doing independently in their individual capacity. There is no joint family business hence question of division of properties and paying maintenance to the defendant No.15 to 17 does not arise at all. There are no documents in support of the present applications.

8. It is submitted that, deceased Basavaraj during his lifetime has not purchased any property nor setup any business of his own. These defendants are doing their independent business ready-made cloths and earning money. Which is in their individual capacity. Their business is running under partnership in which present applicant are not parties.

9. It is submitted that, defendant No.15 is residing in her husbands house since 1990. It cannot be believed that without having no means of income the course of MBBS to defendant No.16 is pursued. It is submitted that defendant No.7 helped in educating defendant No.16 who is completed her MBBS degree and now she is under house mens-ship course and earning her own salary for the maintenance of herself and defendant No.15 and 17. It is submitted that they are giving amount every month to the defendant No.15 for their livelihood. It is submitted that they have no legal obligations to maintain the defendant No.15 to 17 and presents applications is filed at the instigation of defendant No.10 who is intention was to receive from defendant No.15 and 16. It is

submitted that after the death of Basavaraj the LIC amount of Rs.30 lakhs is deposited jointly only for the safely purpose and it is denied that defendant No.17 is unsound mind. It is submitted that defendant No.16 is earning Rs.25,000/- per month and defendant No.15 is leading comfortable life with all facility.

10. It is submitted that the other defendants tried to give in marriage defendant No.16 to a highly qualified doctor by spending their own amount without touching the deposit amount. The bride room doctor told that he will join defendant No.16 to a PG course but unfortunately defendant No.15 by the hearing the words of her father refused the said proposal. Hence on all these ground they prayed to dismiss the application.

11. Heard both the counsels and perused materials.

12. The following points arises for my consideration.

1. Whether defendant No.15 to 17 are entitled for maintenance as prayed for?
2. What order?

13. My findings on the above said points are as under:

Point No.1 : Partly in the Affirmative

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

REASONS

14. **POINT No.1:-** The present suit is filed by the plaintiff for relief of partition and separate possession in respect of suit schedule properties. It is the case of the plaintiff that suit schedule properties are joint family properties in which he along with him other defendants are also having right. The said contention of the plaintiff is denied by the defendants seriously and they contended that suit schedule properties are their self acquired properties earned out of their self earnings and doing business in their individual capacity.

15. The relationship between the parties is not in dispute. It is also not in dispute that the husband of defendant No.15 Basavaraj died in 2004 leaving behind defendant No.15 to 17 as his legal heirs. It is also not in dispute that defendant No.16 has completed her MBBS degree. The learned counsel for the defendant No.2 by taking this court to order of my predecessor dated 16-12-2013 submitted that at this stage the nature of the suit properties is in dispute as such until the matter is decided on merits no interim maintenance can be awarded to defendant No.15 to

17. He has produced before the court certified copies of the sale deeds and original SB account Pass Book which is standing in the name of defendant No.15 and 16. He submitted that defendant No.16 has completed her MBBS course and unless there are sufficient needs she could not have completed her MBBS course therefore, he submitted that defendant No.15 possessed sufficient means to maintain herself and defendant Nos.16 and 17. He also submitted that no documents were produced to show that defendant No.17 is mentally weak. The learned counsel for the defendant No.1, 10 to 14 argued that defendant No.1 is under the care and custody of defendant No.11 and he is age hold person not having individual income. The learned counsels for the defendant No.2 submitted ruling reported in **AIR 1959 Karnataka 152 between Mulimani Sannabasavarjappa Vs. Basavanneppa** to contended that interim maintenance cannot be awarded in a suit. I have carefully gone through the above said citation wherein a revision was preferred against the order directing defendant No.2 to pay interim maintenance of Rs.25/- per month which was set aside by Hon'ble High Court of Karnataka on the ground that there is a dispute as to the relationship between the parties. In this case the relationship with between the parties is not in dispute. Only dispute is with regard

to the nature of properties. As per the plaintiff suit schedule properties are joint family properties which is denied by the defendants. Whether suit properties are joint family properties or self acquired properties is to be decided after full fledged trial. But, fact remains is that the husband of defendant No.15 and father of defendant No.16 and 17 is no more. It is also not in dispute that defendant No.17 is not working. Even though, defendant No.16 completed her MBBS course, it cannot be come to the conclusion that she has established her profession. Recently she has completed her MBBS course and it cannot be expected that she will establish her profession in a overnight. Moreover, she is not expected to remain with defendant No.15 and 17 as she has to marry one or the other day. Though, pass books reveals that a monthly interest is withdraw but standing jointly in the name of defendant No.2 and 15. From perusal of Pass Book, it cannot be made out who has withdrawn the interest. It is not in dispute that defendant No.15 to 17 are leaving in one room of suit house. There is a obligations on the part of the defendant No.15 to look after defendant No.16 and 17. Though, defendant No.15 to 17 can withdrawn the periodical interest of fixed deposit but now it is jointly standing in the name of defendant no.2 and 15. The relationship between the parties is now strained. It cannot be

expected that defendant No.15 having lost husband she will lead dignified life along with defendant No.16 and 17 in the absence of any independent income. It has to be decided whether suit properties are self acquired or joint family properties during the full fledged trial. It may take reasonable time to decide the matter on merits. Until then defendant No.15 to 17 have to lead their dignified life. Defendant No.1 is father-in-law of defendant no.15. Plaintiff, defendant no.2, 7,10,11 and 19 are brothers of deceased Basavaraj, the husband of defendant No.15. They are enjoying suit properties as on today by establishing the business. It is also to be determined whether the said business is carried on with the help of joint family funds or not. It has come in the evidence that PW-1 that the above said defendants are having sufficient turnover and income. There is no impediment for plaintiff, defendant No.2,7,10,11 and 19 to look after defendant No.15 to 17 till final decree is passed. Therefore, having regard to the present cost of leaving and taking in to account FD amount being standing jointly in the name of defendant No.15, it is just and reasonable to award a interim maintenance of Rs.8,000/- per month jointly to defendant No.15 to 17. The plaintiff, defendant Nos.2,7,10,11 and 19 are jointly and severally liable to pay the above said interim maintenance to the defendant Nos.15 to 17. Defendant No.6,

defendant No.18 are daughters and defendant No.1 being father-in-law they are not liable to pay the above said interim maintenance amount.

16. **POINT No.2:-** For the foregoing reasons and discussions, I proceed to pass the following:

:: ORDER ::

I.A.Nos.17 and 18 filed by the defendant Nos.15 to 17 Under section 151 of CPC are hereby partly allowed, by directing plaintiff, defendant Nos.2,7,10,11 and 19 are jointly and severally liable to pay the above said interim maintenance to the defendant Nos.15 to 17, from date of this order till disposal of suit.

No orders as to costs.

(Satish J. Bali)
I Additional Senior Civil
Judge, Gokak.