

KABG600002862023



IN THE COURT OF THE SENIOR CIVIL JUDGE, HUKKERI

Before : **Sri K.S.Rotter**, B.Com. LL.B (Spl),
Senior Civil Judge, Hukkeri.

Dated this 15th day of April 2024

O S No.126/2023

Plaintiffs: Shri Gopal Basavanni Kotabagi & Others

-Versus-

Defendants: Shri Lokappa Basavanni Kotabagi and others

PARTIES TO IA NO.I & II

Applicant/Plaintiffs:

1. **Shri Gopal Basavanni Kotabagi**,
Age: 62 years, Occ: Sainik,
R/o: Noginhal, Taluk: Hukkeri, Dist: Belagavi,
Now residing at Kamatnur, Tal : Hukkeri
and others

(By Shri. A.G. Patil, Advocate)

-Versus-

Opponents/Defendants No.1 to 7 :

1. **Shri Lokappa Basavanni Kotabagi,**
Age: 67 years, Occ: Agriculture,
R/o: Noginihal, Taluk: Hukkeri,
District: Belagavi.
2. **Shri Irappa @ Virupaxi Basavanni Kotabagi,**
Age: 61 years, Occ: Retired servant,
R/o: Shreeram Colony, 13th Cross,
Mutaga village, Sunadoli Road,
Near Bharatesh College.
3. **Smt. Gadigevva W/o Yallappa Pattanshetti,**
Age: 70 years, Occ: Household work,
R/o: Rainapur, Taluk: Yaragatti,
District: Belagavi.
4. **Smt.Shivagangavva W/o Mallappa Kochharagi,**
Age: 68 years, Occ: Household,
R/o: Melmatti, Taluk: Gokak,
District: Belagavi.
5. **Smt. Ratnavva W/o Shankar Gavane,**
Age: 65 years, Occ: Household,
R/o: Kuraniwadi, Taluk: Hukkeri,
District: Belagavi.
6. **Shri Basagond Lokappa Kotabagi,**
Age: 37 years, Occ: Agriculture,
R/o: Noginihal, Taluk: Hukkeri,
District: Belagavi.
7. **Shri Anand Lokappa Kotabagi,**
Age: 33 years, Occ: Agriculture,
R/o: Noginihal, Taluk: Hukkeri,
District: Belagavi.

(By Shri. P.S. Agasagi, Advocate)

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- Sd/-**
(K.S.Rotter)
Senior Civil Judge, Hukkeri

ORDERS ON I.A. NO.I & II

- The plaintiffs have filed IA No.I under Order XXXIX Rule 1 and 2 R/w Section 151 of Civil Procedure Code praying therein for granting temporary injunction restraining the defendants No.1 to 7, their agents, servants or anybody claiming on their behalf from alienating the suit schedule 'A' properties in any manner pending disposal of the suit.
2. Further, the plaintiffs have filed another IA No.II under Order XXXIX Rules 1 and 2 R/w Section 151 of Civil Procedure Code praying therein for granting temporary injunction restraining the defendants No.1 to 7, their agents, servants or anybody claiming on their behalf from causing obstruction and interfering in their peaceful possession and enjoyment over the suit schedule 'A' properties pending disposal of the suit.
3. In support of IA No.I & II, the plaintiff No.2 has filed his sworn affidavits explaining the reasons for granting temporary injunction against the defendants No.1 to 7 and prayed for allowing the said applications.

4. On the other hand, the defendants No.1, 2, 6 and 7 have filed their written statement-cum-objections to IA No.I & also filed separate objection to IA No.II and the defendant No.3 adopted the same and prayed for rejection of IA No.I & II.

5. Both these applications are connected with each other and require common discussion of facts, as such, both these applications are taken together for consideration.

6. Heard both the sides.

7. The points which arise for my consideration are as below:-

1. *Whether the plaintiffs have made out prima-facie case as per IA No.I & II?*
2. *Whether balance of convenience leans in favour of the plaintiffs?*
3. *Whether the plaintiffs will be put to irreparable loss and injury if TI order is not granted?*
4. *What order?*

8. My findings on the above points are as under:-

1. } Both parties are directed to maintain
2. } status-quo with regard to suit properties.
3. }

4. As per final order for the following:-

R E A S O N S

9. **Points No.1 to 4:** I take these points for common consideration, because they are inter-linked with each other.
10. Admittedly, this is a suit filed by the plaintiffs for the relief of partition and separate possession of their 1/9th shares each in the suit 'A' schedule properties. It is the case of the plaintiffs that, the propositus of the plaintiffs and defendants by name Basavanni died on 29.06.1984 due to cancer. The propositus Basavanni has got two wives, namely Kempavva and Bassavva and they are also died. The propositus died leaving behind the present plaintiffs and defendants No.1 to 5 as his legal heirs. The defendants No.6 and 7 are children of defendant No.1. The plaintiffs contended that, the suit schedule properties are joint family ancestral properties of plaintiffs and defendants No.1 to 7 and they are in joint possession and enjoyment of the suit properties by metes and bounds. It is stated that, the defendants No.8 to 23 are near relatives and their names are appearing in the RTC of the suit properties, as such, they are also made as

parties to the present suit but they have not sought any prayer against them. Further the plaintiffs contended that, as the propositus Basavanni was suffering from cancer and he was bed ridden and by taking the disadvantage of the same, the defendants No.1 to 5 have got created false and concocted documents without the consent and knowledge of the propositus Basavanni and plaintiffs and got entered their names to the RTC extract of the suit properties. Further the plaintiffs alleged that, even though no partition effected in between plaintiffs and defendants No.1 to 5, the defendants with an intention to defraud the share of plaintiffs and dupe the suit properties have changed revenue records of the suit properties. Further now the defendants taking the advantage of their names appearing in the suit properties trying to alienate the suit properties without allotting legitimate share to the plaintiffs. Further plaintiffs stated that, now the defendants No.1 to 7 attempting to interfere with their joint possession and enjoyment of the suit properties. Therefore, plaintiffs filed this suit for partition and separate possession. Along with the suit, plaintiffs have filed I.A.I and II under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure praying therein for restraining the

defendants from alienating the suit schedule property in any manner and also restraining them from interfering in their joint possession and enjoyment of suit property in any manner pending disposal of the suit. Hence, the plaintiffs contended that, they have got prima-facie case and balance of convenience lies in their favour and if T.I. is not granted they will be put irreparable loss and hardship. Hence, prayed for allowing IA No.I and II.

11. On the other hand, the defendants No.1, 2, 6 & 7 have filed their written statement-cum-objections to I.A.No.I and the defendant Nos.3 have adopted the same written statement as objections to I.A.No.I and the said defendants have filed separate objection to IA-II. These defendants stated that, the suit of the plaintiffs as well as I.A.No.I and II filed by the plaintiffs are false, baseless and not maintainable under law. Further defendants denied the description of the suit 'A' schedule properties as they are not identifiable. Further the defendants No.1, 2, 6 and 7 denied that, the suit schedule properties are joint family ancestral properties of plaintiffs and defendants and they are in joint possession and enjoyment of the same

without any partition by metes and bounds. Further the defendants stated that, the plaintiffs have not approached this court with clean hands and they have suppressed the material facts and the plaintiffs have not impleaded all the interested persons in the present suit and suit is not maintainable under law until adding all the necessary parties in this suit. Further the defendants denied the relationship of plaintiffs and defendants as stated in the plaint. The defendants denied that, the propositus Basavanni had two wives namely Bassavva and Kempavva as shown in the genealogy of the plaint. Further the defendants denied that, they have got created the fake documents and entered their name to the suit properties as alleged in the plaint. Further the defendants stated that, no cause of action arose to the plaintiffs for filing present suit and the cause of action arose to the plaintiffs is false and imaginary one. The defendants No.1, 2, 6 and 7 specifically contended that, the plaintiffs have no right, title and interest over the suit properties since already joint family properties have been partitioned long back. According to defendants, their father during his lifetime has partitioned the joint family properties and said partition was already acted upon and the present plaintiffs and

defendants are in possession and enjoyment of their respective shares since long time. As such, question of again effecting partition in the suit properties does not arise at all. Further the defendants contended that the propositus Basavanni was the kartha of the family of defendants and said Basavanni died leaving behind his legally wedded wife Kempavva and both have died leaving behind their two sons and three daughters namely i) Lokappa, ii) Virupaxi, iii) Gadigevva, iv) Shivagangavva and v) Ratnavva. Further the defendants stated that, propositus Basavanni during his lifetime has illicit relationship with the mother of plaintiffs by name Basawwa and the plaintiffs are born to said Basavanni through Basavva and they are illegitimate children and they are not entitle any share in the suit properties. Further the defendants stated that, during his lifetime, the propositus Basavanni has effected partition and at the time of partition, he has given the property bearing Sy.No.45/1 measuring 3acres-3guntas of Awargol village to the plaintiffs No.1 and 2 and the plaintiffs have accepted the same and as per said partition, M.E.No.713 dated 26.03.1984 was also certified and this fact is well within the knowledge of plaintiffs. Further the defendants contended that, after

the said partition they have started residing separately and defendant No.1 has alienated his share of land bearing Sy.No.74 measuring 18guntas in favour of defendants No.6 and 7. Further the defendants specifically contended that, thereafter the plaintiffs approached the defendants No.1 and 2 and stated that, they are not interested to hold the land bearing Sy.No.74 and they have relinquished the said property in favor of defendants No.1 and 2 and handed over the possession of the same on 21.02.2002. Further the defendants stated that, another ancestral property bearing No.88/1 of Noginhal village was standing in the name of propositus Basavanni and after his death, his legal heirs names have been mutated. But the plaintiffs without the consent of defendants have created false consent affidavit and got entered his name to the said property colluding with the Noginhal panchayat officials. Further the defendants contended that, after the partition they have invested huge amount to their shares of landed properties and developed their properties. By knowing the said facts, the plaintiffs have filed these false applications. Further the defendants stated that, plaintiffs are not in possession of the suit properties and they have not properly valued the suit and not paid

proper court fee. Therefore, defendants contended that, plaintiffs have no manner of right, title or possession over the suit schedule properties and only with an intention to give harassment to them, the plaintiffs have filed this false suit. Hence, defendants stated that, the plaintiffs have not approached to this court with clean hands. They have neither prima facie case nor balance of convenience lies in their favour. Accordingly, defendants prayed for dismissing the IAs filed U/O 39 Rule 1 and 2 of CPC with cost.

12. The advocate for the plaintiffs vehemently argued and submitted that, the plaintiffs and defendants are joint family members and suit properties are their joint family properties but the defendants No.1 to 7 by taking the disadvantage of their names appearing in the suit properties and behind back of plaintiffs trying to alienate the suit properties without allotting the legitimate share of plaintiffs. He also contended that, plaintiffs and defendants are in joint possession and enjoyment of suit properties but defendants No.1 to 7 are interfering in their peaceful possession and enjoyment of the suit schedule properties and they are closing road of suit properties by putting

stones and wood. Hence the advocate for plaintiffs prayed for granting TI against the defendants.

13. On the other hand the advocate for defendants argued with force and submitted that, the plaintiff are illegitimate children of propositus Basavanni born out his illicit relationship with the mother of plaintiffs by name Basawwa and they are not entitle any share in the suit properties. It is also argued that, during his lifetime, the propositus Basavanni has already effected partition and given the property bearing Sy.No.45/1 measuring 3acres-3guntas of Awargol village to the plaintiffs No.1 and 2 and after the said partition they started residing separately and thereafter the plaintiffs approached the defendants No.1 and 2 and stated that, they are not interested to hold the land bearing Sy.No.74 and they have relinquished the said property in favor of defendants No.1 and 2 and handed over the possession of the same on 21.02.2002. Further, it is contended that, the plaintiffs without having any right or interest over the suit schedule properties trying to cause obstruction and interfering in the peaceful possession and enjoyment of the defendants over the suit

schedule properties. Hence, advocate for defendants prayed for dismissing the IAs.

14. I have perused the pleadings, documents and other connected case papers. In this case the plaintiffs contended that, suit schedule properties are joint family properties of plaintiffs and defendants and they have got 1/9th share in the suit properties. On the other hand the defendants No.1 to 3,6 and 7 denied the relationship of the plaintiffs with them and contended that, the plaintiff are illegitimate children of propositus Basavanni born out his illicit relationship with the mother of plaintiffs by name Basawwa and they are not entitle any share in the suit properties. However at this stage this contentions of defendants cannot be acceptable, because, our Hon'ble High court in a decision reported in **2015 (3) Kar.L.J 510 (DB) in the case between N.Sathish Kumar V/s Smt.D.Gowramma and Others**, wherein it is held that; "**HINDU MARRIAGE ACT, 1955, Section 16 – Civil Procedure Code, 1908, Order 41, Rule 22 – Though plaintiffs treated as illegitimate children by virtue of Section 16, they are conferred with the status of legitimate children insofar as claim to property of**

their parents is concerned- Hence entitled to equal to equal share along with legitimate children in respect of self acquired properties of their parents”.

15. Further in this case, defendants specifically stated that, during his lifetime, the propositus Basavanni has already effected partition and given the property bearing Sy.No.45/1 measuring 3acres-3guntas of Awargol village to the plaintiffs No.1 and 2 and after the said partition they started residing separately and thereafter the plaintiffs approached the defendants No.1 and 2 and stated that, they are not interested to hold the land bearing Sy.No.74 and they have relinquished the said property in favor of defendants No.1 and 2 and handed over the possession of the same on 21.02.2002. But at this stage, this contention of defendants cannot be acceptable, because, to substantiate their contentions at this stage defendants have not produced any registered deed of partition and also not produced any registered relinquishment deed. At this stage, the defendants have not produced any documents for showing any previous partition in between the plaintiffs and defendants. The ROR extracts and other

documents produced by the plaintiffs and defendants shows that, now some of the suit schedule properties are standing in the name of defendants and some other properties are standing in the names of plaintiffs. The plaintiffs have produced photographs of suit properties, in which it is clearly disclosing that, some stones and woods are put across the road and tried to close the road to the suit properties. Under such circumstances, if the defendants illegally causing obstruction for the use of cart way or road to suit properties of plaintiffs, they will be put to irreparable loss and hardship. Therefore, whether the suit schedule properties are joint family properties of plaintiffs and defendants or not? and whether the plaintiffs are entitled partition and separate possession in the said suit properties or not? are some of the substantial questions to be determined at later stage. It requires full pledged enquiry. At this stage, the plaintiffs apprehend that, the defendants No.1 to 7 are illegally trying to alienate the suit properties and also interfering with their joint possession. If during the pendency of the suit, the suit properties are alienated, it will defeats the valuable right of plaintiffs in the suit properties and it will also leads to multiplicity of proceedings. If the defendants are restrained from

alienating the suit properties, the right to use and enjoyment of the suit properties by the both parties will not be curtailed. The only right to be curtailed is that of alienation. Therefore, until the determination of the right of plaintiffs and defendants over the suit schedule properties, the suit 'A' schedule properties has to be preserved in its present form, or else it will affect the rights of either parties. Hence, at this stage, I am of the opinion that, it will be just and proper, if both the parties are directed to maintain status-quo with regard to the suit 'A' schedule properties until disposal of this suit. Therefore, I answer points No.1 to 3 accordingly.

16. **Point No.4:** For the foregoing reasons, I proceed to pass the following:-

ORDER

The IAs No.I and II filed by the plaintiffs under Order XXXIX Rules 1 and 2 R/w Section 151 of Civil Procedure Code are hereby partly allowed.

Both plaintiffs and defendants are hereby directed to maintain status-quo with regard to the suit schedule properties pending disposal of suit.

No order as to costs.

(Dictated to the Stenographer, typed by her, corrected by me and then pronounced in open court on this 15th day of April 2024).

**-Sd/-
(K.S.Rotter),
Senior Civil Judge, Hukkeri.**