

**IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC,
AT BANAHATTI.**

DATED THIS THE 26th DAY OF JUNE-2023.

Present : Sri.Kirankumar D.Wadigeri, B.A,L.L.B.,
Senior Civil Judge & JMFC,
Banahatti..

FDP.No.14/2016.

Petitioners:

1. Ashwini W/o: Rajkumar Managanve,
Age: 25 years, Occ: Household work,
R/o: Kavalagudda, Tq: Athani,
Dist: Belagavi.
2. Smt. Sharada W/o: Ashok Kagi,
Age: 45 years, Occ: Agriculture & Household
work, R/o: Terdal Now at Savalagi.

(By pleader **Sri. D.M.J.**)

Respondents:

1. Bhupal S/o: Parappa Kagi,
Age: 52 years, Occ: Agriculture,
R/o: Terdal, Tq: Jamkhandi,
Dist: Bagalkot.
2. Ashok S/o: Parappa Kagi,
Age: 43 years, Occ: Agriculture,
R/o: Terdal, Tq: Jamkhandi,
Dist: Bagalkot.

(Dead the plaintiffs are L/R)

3. Bhujabali S/o: Parappa Kagi,
Age: 46 years, Occ: Agriculture,
R/o: Terdal, Tq: Rabkavi-Banhatti,
Dist: Bagalkot.

4. *Subhash S/o: Parappa Kagi,*
Age: 44 years, Occ: Agriculture,
R/o: Terdal, Tq: Jamkhandi,
Dist: Bagalkot.

5. *Parappa S/o: Bhimappa Kagi,*
Age: 72 years, Occ: Agriculture,
R/o: Terdal, Tq: Jamkhandi,
Dist: Bagalkot.

(Since dead by his LR)

5A. *Smt. Prema D/o: Bhimappa Kagi,*
Age: 57 years, Occ: Household work,
R/o: Terdal, Tq: Jamkhandi,
Dist: Bagalkot.

6. *Bhimappa S/o: Jinnappa Talli,*
Age: 52 years, Occ: Agriculture,
R/o: Terdal, Tq: Jamkhandi,
Dist: Bagalkot.

(Since dead by his LR)

6A. *Smt. Nemakka W/o: Bhimappa Talli,*
Age: 45 years, Occ: Household work,
R/o: Terdal, Tq: Jamkhandi
Dist: Bagalkot.

6B. *Jinnappa S/o: Bhimappa Talli,*
Age: 48 years, Occ: Agriculture,
R/o: Halingali, Tq: Jamkhandi
Dist: Bagalkot.

6C. *Paris S/o: Bhimappa Talli,*
Age: 46 years, Occ: Agriculture,
R/o: Halingali, Tq: Jamkhandi
Dist: Bagalkot.

6D. *Smt. Sushilawwa W/o: Ramappa Khangond,*
Age: 43 years, Occ: Household work,
R/o: Halingali,, Tq: Jamkhandi
Dist: Bagalkot.

- 6E.** *Smt. Sundrawwa W/o: Annappa Talli,*
Age: 42 years, Occ: Household work,
R/o: Halingali, Tq: Jamkhandi
Dist: Bagalkot.
- 6F.** *Smt. Sujata W/o: Subhash Kavatakoppa,*
Age: 41 years, Occ: Household work,
R/o: Halingali, Tq: Jamkhandi
Dist: Bagalkot.
- 6G.** *Smt. Sunanda W/o: Madappa Shirahatti,*
Age: 26 years, Occ: Household work,
R/o: Halingali, Tq: Jamkhandi
Dist: Bagalkot.

*(By pleader **Sri. M.G.K.** for R.6(A to D), **Sri. P.N.K.** for D.4 and R.1, R.3, R.5 and R.6 Dead)*

IA No.IV

Applicant :

1. Smt. Ashwini W/o: Rajkumar
Managanve.

V/s

Opponents :

1. Bhupal S/o: Parappa Kagi & Others.
2. The Manager,
Amanat Credit Co-Operative
Credit Society LTD Kallatti, Terdal.

:ORDER:

1. The petitioner has filed this application under section 151 of CPC to direct the opponent to deposit the amount deposited by

one Bhupal Kagi with accrued interest thereon till today before this court.

- 2.** The petitioner in her affidavit filed along with this application has stated that, during the pendency of this petition, the respondent No.1 Bhupal and respondent No.3 Bhujabali are died without leaving any legal heirs. That her father who is respondent No.2 is also died leaving behind her as his only Class-I heir. That she recently came to know that, the deceased respondent No.1 has made fixed deposit amount in the opponent bank, in which she is having right, title and interest. Accordingly, she approached the opponent bank and requested to disburse the deposited amount but they have shown inability and they are not ready to furnish the details and asked to produce court order. Therefore, it is just and necessary to direct the opponent to deposit the said fixed deposited amount before the Court. If the application is allowed no harm or injury will be caused to the opponent and hence, it is prayed to allow IA.No.IV.
- 3.** The opponent has appeared through its counsel and filed its objections and respondent No.4 has also filed his objection to

this application contending that, this application is not maintainable. This petition is in respect of landed properties under decree passed in OS.No.392/2000 dated 29.11.2008. That the dispute is in respect of share of the plaintiff against defendants and sons of deceased Parappa have divided under court decree and present petition is not pertaining to the money decree or bank deposits. Further it is admitted that, the deceased Bhupal during his lifetime in his individual capacity had deposited total amount of Rs.7,00,000/- and at present as on 22.03.2022 outstanding amount is of Rs.8,14,689/-. So, without succession certificate the opponent bank is unable to disburse the fixed deposited amount of the deceased respondent No.1.

- 4.** Further it is requested to direct the petitioner or anybody claiming the legal heirs of deceased respondent No.1 may get succession certificate from the competent court to receive the fixed deposited amount of respondent No.1. Hence, it is prayed to dismiss the application filed by the petitioner.
- 5.** Heard both the counsels and perused the documents produced by the both parties.

6. The points that would arise for my consideration are as follows:

Points on IA.No.IV

1. Whether the petitioner has made out grounds to allow IA.No.IV?
2. What order?

7. My findings on the above points as follows:

Point No.1 : **In the Negative.**

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

REASONS

8. Point No.1 : Admittedly, this petition is filed on the basis of the decree passed in OS.No.392/2000 against these respondents only in respect of landed properties. The deceased Bhupal who is respondent No.1 in this petition has deposited the said amount in the opponent bank. However, as per case of the petitioner the deceased died without any legal heirs and she has claimed that she is also having right, title and interest over the said amount. In that respect there is no document produced by the petitioner to show that the deceased respondent No.1 died without leaving behind any legal heirs.

9. Further this FDP proceedings is only in respect of landed properties included in the said suit. Then in order to ascertain whether this petitioner is having right, title and interest, she has to establish the same. So the opponent bank has rightly pointed out that without production of succession certificate, none of the persons who are claiming under the deceased respondent No.1 are not entitled to get the fixed deposited amount of the deceased respondent No.1. Therefore, it is not proper to direct the opponent to deposit the said amount before this court. As submitted by the opponent it is just and proper to direct the opponent bank not to disburse the fixed deposited amount without production of succession certificate by any of the persons. Therefore, the petitioner has not made out any grounds to allow IA.No.IV. Hence, my finding on **point No.1 is in the Negative.**

10. **Point No.2** : In view of the reasons and finding given to point No.1, the following is made;

ORDER

IA.No.IV filed by the petitioner under section 151 of CPC is hereby dismissed.

Further the opponent bank is directed to disburse the fixed deposited amount by the deceased respondent No.1 only after production of succession certificate.

(Order dictated to the Stenographer, transcribed and computerized by her, then corrected and pronounced by me in the Open Court on this 26th day of June 2023.)

(Kirankumar D.Wadigeri)
Senior Civil Judge & JMFC,
Banahatti.