

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

DATED THIS THE 02nd DAY OF February 2024.

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

O.S.No.155/2021.

Plaintiffs:

1. Smt. Kasturi W/o: Shrikant Savasuddi,
Age: 64 years, Occ: Agriculture/HHW,
2. Basavaraj S/o: Shrikant Savasuddi,
Age: 38 years, Occ: Agriculture/Business,
3. Kumari. Geeta D/o: Shrikant Savasuddi,
Age: 35 years, Occ: Agriculture/HHW,
4. Kumari. Shaila D/o: Shrikant Savasuddi,
Age: 34 years, Occ: Agriculture/HHW,

All are R/o: Near Hanuman Temple,
Chavadi Galli, Rabkavi, Tq: Rabkavi-
Banhatti, Dist: Bagalkot.

(By pleader **Sri. B.R.Y.**)

-Versus -

Defendants:

1. Nagaraj S/o: Shrikant Savasuddi,
Age: 36 years, Occ: Agriculture/Business,
R/o: Totad Mane, Kaltippi, Rabkavi,
Tq: Rabkavi-Banhatti, Dist: Bagalkot.

2. Smt. Mahadevi W/o: Suresh Bandal,
Age: 40 years, Occ: Agriculture/HHW,
R/o: Chavadi Galli, Rabkavi, Tq: Rabkavi-
Banhatti, Dist: Bagalkot.

(By pleader **Sri. S.G.K.** for D.1 and
Sri. C.B.M. for D.2)

IA.No.II

Applicants :

1. Smt. Savita W/o: Babu Shiraganvi,
Age: 35 years, Occ: Household work,
R/o: Jalalapur, Tq: Raibag, Dist: Belagavi.
2. Prakash S/o: Basaprabhu Mudalagi,
Age: 32 years, Occ: Agriculture,
R/o: Rabkavi, Tq: Rabkavi-Banhatti,
Dist: Bagalkot.
3. Smt. Neelawwa W/o: Nagaraj Savasuddi,
Age: 30 years, Occ: Household work,
R/o: Kaltippi, Tq: Rabkavi-Banhatti,
Dist: Bagalkot.
4. Smt. Kavita W/o: Hanamant Golabhavi,
Age: 28 years, Occ: Household work,
R/o: Palabhanvi, Tq: Raibag,
Dist: Belagavi.
5. Smt. Bharati W/o; Irappa Chougala,
Age: 26 years, Occ: Household work,
R/o: Jalalapur, Tq: Raibag, Dist: Belagavi.

-versus-

Opponents :

Smt. Kasturi W/o: Shrikant Savasuddi
and Others.

IA.No.III

Applicants :

Smt. Kasturi W/o: Shrikant Savasuddi
and Others.

-versus-

Opponents :

Nagaraj S/o: Shrikant Savasuddi
and Another.

ORDERS

1. The applicants have filed IA.No.II under order 1 rule 10 of CPC to implead them as proposed defendant No.3 to 7. The plaintiffs have filed IA.No.III under section 16 rule 6 of CPC to issue summon to the Chief Officer, CMC Rabkavi, to produce the birth and death register of the year 1972.
2. The proposed defendant No.2 in his affidavit filed along with IA.No.II has stated that, the plaintiffs by suppressing material facts and by giving false Genealogy of the family, have filed the suit without impleading them. That, the deceased Shrikant who had two wives and his 1st wife by name Chandrawwa died on 29.04.1972 and his 2nd wife is plaintiff No.1. One Bagawwa @ Bhagirati who is only

daughter of Chandrawwa and Shrikant Savasuddi, who died two years ago by leaving these applicants as only legal heirs. That, the plaintiffs and defendant No.1 & 2 are not the legal heirs and co-parceners and they being the grand-sons and daughters of Chandrawwa and Shrikant Savasuddi are the co-parceners and without impleading them as defendants, the suit for partition and separate possession is not maintainable. Therefore, they are the proper and necessary parties to the suit and if the application is not allowed they will face much hardship and loss and hence, it is prayed to allow IA.No.II.

- 3.** The plaintiffs in their objections have contended that, without producing any material documents to show that said Chandrawwa is 1st wife of deceased Shrikant Savasuddi, this application is not maintainable. Further they have not produced any documents with regard to the relationship of the opponents with deceased Shrikant Savasuddi. That, the plaintiff No.1 is only the wife and other plaintiffs and defendant No.1 & 2 are the sons and daughters of the plaintiff No.1 and deceased Shrikant Savasuddi. Therefore,

these applicants are not the proper and necessary parties and if the application is allowed they will face much hardship and loss and hence, it is prayed to dismiss IA.No.II filed by the applicants.

- 4.** Advocate for the plaintiffs in his memorandum of facts has stated that, the proposed defendants have produced the death extract of Smt. Chandrawwa who is alleged 1st wife of Shrikant Savasuddi who died on 24.09.1972. Thereafter, they have approached CMC Office Rabkavi, and it was learnt by them that, there was no such entries in the birth and death register maintained by CMC, in respect of Smt. Chandrawwa. They have also made application under RTI Act, to the said office and sought for the death extract and entries made in the said register of Chandrawwa but they have not produced any copy of them. Therefore, in absence of other documents to show that, deceased Chandrawwa is 1st wife of Shrikant Savasuddi, it is very much necessary to get the copy of birth and death register maintained by the CMC Rabkavi. Therefore, it is necessary to summon the said

authority to produce the said document which is very much necessary at this stage itself.

5. The proposed defendants have filed their objections to this application that, on 29.03.2023, the plaintiffs have made application to the said authority under RTI Act, but within 14 days of the said application they have filed this application to summon the said authority to produce the said document. Already the plaintiffs have obtained detail information with regard to the death extract of Chandrawwa, now without making grounds for filing this application and this application without affidavit of any of the plaintiffs only on the memo of facts is not maintainable. Only in order to not to implead them as proposed defendants, the plaintiffs have filed this false application. Hence, it is prayed to dismiss IA.No.III filed by the plaintiffs.

6. Heard both sides on IA.No.II & III.

7. Then the following points arise for consideration of this court are as under:-

1. Whether the applicants have made out grounds to allow IA.No.II ?

2. Whether the plaintiffs have made out grounds to allow IA.No.III ?

3. What order?

8. The findings of this court on the above points are as under:

Point No.1 - In the Affirmative.

Point No.2 - In the Negative.

**Point No.3 - As per final order,
for the following:**

REASONS

9. Point No.1 & 2 on IA.No.II & III : The plaintiffs have filed the suit for partition and separate possession in the suit properties. They have shown the Genealogy along with the plaint, that, one Shrikant is the propositus who died in the year 2012 and his wife is plaintiff No.1. The plaintiff No.2, 3 & 4 are the son and daughters and defendant No.1 & 2 are the son and daughter of plaintiff No.1 and deceased Shrikant and the suit properties are their ancestral properties. In IA.No.II, the applicants have specifically taken contention that, one Chandrawwa is 1st wife of deceased Shrikant Savasuddi and out of their wedlock only daughter by name Bagawwa @ Bhagirati born to them and these applicants are the son and daughters of deceased Bagawwa @

Bhagirati. Therefore, they are the Class-I legal heirs of deceased Shrikant Savasuddi.

10. That, these plaintiffs are no way concerned to the joint family and they are not the Class-I legal heirs of deceased Shrikant Savasuddi. In their support, the applicants have produced death extract of deceased Chandrawwa, Bagawwa @ Bhagirati and Shrikant Savasuddi, except these documents, at this stage the applicants have not produced any other documents to show that, Chandrawwa is 1st wife of deceased Shrikant Savasuddi. That, this application is at initial stage and only after allowing them to come on records and only during the time of trial the applicants can prove their relationship with the deceased Shrikant Savasuddi. They have also produced vardi and MR extract, in which also it is shown that, the plaintiffs and defendant No.1 & 2 are only legal heirs of deceased Shrikant Savasuddi and now the suit properties are standing in the name of Shrikant Savasuddi.

11. Further they have produced partition deed held in between the plaintiffs and defendant No.1 & 2. Already on behalf of the plaintiffs, the PW-1 got examined and the defendant No.1 & 2

have not filed their written statement. So, as far as the application filed by the applicants, without going into the merits of the case, it is just and proper to allow them to come on records as defendant No.3 to 7. As far as, the application filed by the plaintiffs is concerned, already they have obtained the copy of the letter issued by CMC Rabkavi, under RTI Act, in which it is stated that, as per online records they have issued the death extract of deceased Chandrawwa on 18.02.2022. However, it is not enough to state at this stage that, deceased Chandrawwa is the 1st wife of Shrikant Savasuddi but it is all matter of trial and without the evidence at this stage, it is not proper to summon the said authority to produce the birth and death register to the court in respect of the year 1972. Therefore, the plaintiffs have not made out grounds to allow IA.No.III and on the other hand, these applicants are the proper and necessary parties to come on records. Hence, my findings to **point No.1 is in the Affirmative and point No.2 is in the Negative on IA.No.II & III.**

12. Point No.3 on IA.No.II & III: In view of the reasons and findings given to point No.1 & 2, the following is made-

ORDER

IA.No.II filed under order 1 rule 10 of CPC by the applicants is hereby allowed.

IA.No.III filed under section 16 rule 6 of CPC by the plaintiffs is hereby dismissed.

Accordingly, the plaintiffs are hereby directed to implead the applicants in IA.No.II as defendant No.3 to 7.

Call on for amendment and amended plaint.

No order as to costs.

(Dictated to the Stenographer, transcribed and computerized by her, corrected and then pronounced by me in the open court on 02nd day of February 2024)

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