

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

DATED THIS THE 04th DAY OF MARCH-2024.

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

OS.No.337/2022
(Old No.13/2008)

Plaintiffs :

- 1.** Noorahmad S/o: Dastagirsab Allas,
Age: 40 years, Occ: Agriculture,
R/o: Hanagandi, Tq: Jamkhandi.
- 2.** Adamsab S/o: Dastagirsab Allas,
Age: 48 years, Occ: Agriculture,
R/o: Hanagandi, Tq: Jamkhandi.
- 3.** Salem S/o: Dastagirsab Allas,
Age: 35 years, Occ: Agriculture,
R/o: Hanagandi, Tq: Jamkhandi.
(Since dead by his LR's)
- 3A.** Mohasin S/o: Salem Allas,
Age: 30 years, Occ: Mobile Shop,
- 3B.** Salman S/o: Salem Allas,
Age: 30 years, Occ: Kirana Shop,

Both are R/o: Near J.M. Road, Gachin Math,
Vijayapur. Dist: Vijayapur.
(Amended as per Order on IA.No.X
dated 27.09.2023)
- 4.** Sakendar S/o: Dastagirsab Allas,
Age: 30 years, Occ: Agriculture,
R/o: Hanagandi, Tq: Jamkhandi.

5. Abdulsatar S/o: Kasimsab Allas,
Age: 37 years, Occ: Agriculture,
R/o: Near Gachchinmahal Bijapur.
6. Smt. Jannatabee W/o: Dastagirsab Allas,
Age: 55 years, Occ: Agriculture & HHW,
R/o: Hanagandi, Tq: Jamkhandi.
Now R/o: Bhuigalli Terdal, Tq: Jamkhandi.
(Amendment of plaint is carried out as per Order
dated 16.03.2007 on IA.No.VI on 23.03.2007)
7. Mustaq S/o: Abubakar Sangtas,
Age: 40 years, Occ: Agriculture,
R/o: Terdal, Tq: Rabkavi-Banhatti.
(Amended as per Order on IA.No.VI dated
06.02.2023)

(By pleader **Sri. M.G.K.**)

V/s

Defendants:

1. *Hasansab S/o: Khidarsab Allas,*
Age: 50 years, Occ: Nil,
R/o: Hanagandi, Tq: Jamkhandi.
2. *Hasansab S/o: Rajesab Mujawar,*
Age: 52 years, Occ: Agriculture,
R/o: Hanagandi, Tq: Jamkhandi.
3. *Mainuddin S/o: Babalal Pakali,*
Age: 40 years, Occ: Agriculture,
R/o: Hanagandi, Tq: Jamkhandi.
4. *Akbar S/o: Lalasab Horatti,*
Age: 38 years, Occ: Nil,
R/o: Hanagandi, Tq: Jamkhandi.
5. *Ismail S/o: Gudusab Horatti,*
Age: 40 years, Occ: Nil,
R/o: Hanagandi, Tq: Jamkhandi.

6. *Masabai W/o: Mamalal Sanadi,*
Age: 50 years, Occ: Agriculture,
R/o: Hanagandi, Tq: Jamkhandi.
(Since dead by her LR's)

6A. *Moulasab S/o: Mamalal Sanadi,*
Age: 60 years, Occ: Agriculture,
R/o: Hanagandi, Tq: Rabkavi-Banhatti.

6B. *Gulab S/o: Mamalal Sanadi,*
Age: 57 years, Occ: Agriculture,
R/o: Hanagandi, Tq: Rabkavi-Banhatti.
(Amended as per Order on IA.No.V dated
07.01.2023)

*(By pleader **Sri. A.A.M.** for D.1
to D.4, D.6(A), **Sri. R.N.I.** for
D.3(B), D.3(A) absent and D.5 &
D.7 placed ex-parte)*

IA No.IX

Applicants /Ori. Plaintiff No.4 & 7:

- 1.** Sikandar S/o: Dastagrisab Allas,
Plaintiff No.4, assignee under partition
deed registered by other remaining plaintiffs.
- 2.** Mustaq S/o: Abubakar Sangatras,
Plaintiff No.7 purchaser of suit property
under registered sale deeds.

V/s

Opponents/Ori. Defendants:

*Hasanasab S/o: Kadirasab Allas
and others.*

IA No.XII

Applicant/Ori. Plaintiff No.4:

Sikandar S/o: Dastagrisab Allas,
R/o: Hanagandi, Tq: Rabkavi-Banhatti.

V/s

Opponents/Ori. Defendants:

*Hasanasab S/o: Kadirasab Allas
and others.*

:ORDERS:

1. The plaintiff No.4 & 7 have filed IA.No.IX under order order 22 rule 10 of CPC, R/w. section 21 (1) (2) of Limitation Act, to grant the leave to continue the suit proceedings in favour of plaintiff No.4 & 7, in view of the assignment, creation or devolution of interest during the pendency of the suit and purchaser of suit property during pendency of the suit. And under order 6 rule 17 of CPC to permit the plaintiff No.7 to amend the plaint as stated in the application.
2. The plaintiff No.4 in his affidavit filed along with IA No. IX has stated that, the suit land was tenanted land and occupancy rights have been granted in favour of father of the plaintiff No.1 to 6 by name Dastagirsab by the Land Tribunal Jamkhndi.

That, said Dastagirsab died on 20.08.1984 intestate without executing any documents in favour of anybody. After his demise the plaintiff No.1 to 6 have succeeded to the suit property and they became absolute owners in possession of the suit property and mutation was also accepted in their names. The defendants being strangers to the suit land have obstructed their peaceful possession of the suit property in the year 2001 and hence, the plaintiff No.1 to 6 have filed the suit in OS.No.92/2001.

- 3.** After restoration it is renumbered as OS.No.337/2022 and transferred to this court. During the pendency of the suit, the plaintiff No.1, 2, 3, 5 & 6 have given up their right, title and interest over the suit property in favour of plaintiff No.4 by executing registered partition deed dated 11.05.2009. Hence, he became the absolute owner in possession of the suit property and all the revenue records got mutated in his name. Subsequently, he being assignee or transferee, has got right to continue the suit proceedings and hence, he only the proper party to the proceedings.

4. Further during the pendency of the suit, he has sold the entire suit property in favour of plaintiff No.7 under the registered sale deeds dated 30.06.2021 and 01.07.2021. So, on the strength of registered sale deeds, the plaintiff No.7 became the absolute owner of the suit property and he has been impleaded as plaintiff No.7 by filing the application under order 22 rule 10 of CPC and same was allowed. Further, this plaintiff No.7 has been impleaded as respondent No.7 in RSA's filed by the defendants which are pending before the Hon'ble High Court of Karnataka. Further during the pendency of the suit, the plaintiff No.1, 2 & 5 died and he being assignee and the plaintiff No.7 being purchaser of the suit property are the only parties to continue the proceedings as during the pendency of the suit, the said partition deed and registered sale deeds have been taken place and hence, the plaintiff No.1, 2 & 5 are not necessary and the suit will not be abated for the reasons as stated above. Hence, it is prayed to allow IA.No.IX.

5. The plaintiff No.7 in his affidavit filed along with IA.No.XII has also stated the same as stated by the plaintiff No.4 in his affidavit filed along with IA.No.IX. Further he has stated that, during the pendency of the suit as per partition deed, the

plaintiff No.4 became the assignee and transferee as pendent-lit and he being the purchaser of the suit property as stated above are only the parties to continue with the suit. Therefore, about those proceedings held during the pendency of the suit are very much necessary to plead the same in the suit and hence, it is prayed to permit them to amend the plaint as per proposed amendment slip.

- 6.** The defendant No.1 to 4 & 6A in their objections to these applications have taken contention that, the plaintiff No.1 to 6 have filed the suit in OS.No.92/2001 and same was returned to present the same before the competent court and accordingly, they have presented the plaint before the Senior Civil Judge Court Jamkhandi and it was renumbered as OS.No.13/2008 and same was dismissed for non-prosecution. Thereafter, in view of order passed in Civil.Misc.No.14/2016, suit was restored and transferred to this court and renumbered as OS.No.337/2022 but the plaintiffs have not taken any steps to bring the LR's of plaintiff No.1, 2 & 5 and they have not complied the order and hence, the suit itself is not maintainable and liberty to be abated.

7. That, the plaintiff No.1 to 6 had no right, title and interest over the suit property and till their title is not decided in this suit and inspite of that, the plaintiff No.1, 2, 3, 5 & 6 have entered into the said partition who had no absolute rights to given up their rights in favour of plaintiff No.4. Further plaintiff No.4 had got defective title and hence, he has also no right to sell the suit property in favour of plaintiff No.7. Under these circumstances, without bringing the LR's of plaintiff No.1, 2 & 5, the suit is abated. Further the proposed amendment of the plaint is totally devoid of merits and proposed amendment is filed fill up the lacuna. The plaintiff No.4 has to prove the alleged partition and title over the suit property and without bringing the LR's of plaintiff No.1, 2, 3, 5 & 6, these applications and suit are not maintainable. Hence, it is prayed to dismiss IA.No.IX & XII.

8. Heard both the counsels and perused the documents produced by the both parties.

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

Points on IA.No.IX & XII

1. Whether the plaintiff No.4 & 7 have made out grounds to allow IA.No.IX & XII?
2. What order?

10. My findings on the above points in IA.No.IX & XII as follows:

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

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

REASONS

11. Point No.1 on IA.No.IX & XII : The plaintiff No.1 to 6 have filed the suit for declaration and consequential relief of permanent injunction against the defendants. They have pleaded in their plaint that, the suit land has been granted to their father by name Dastagirsab by the Land Tribunal Jamkhandi in the year 1980 and he died in the year 1984 intestate and without executing any testamentary documents or any kind of document in favour of anybody. That they being Muslims who came under Mohammedan Law and immediately after the death of Dastagirsab they have succeeded to the suit property. When the defendants tried to interfere and obstructed for their peaceful possession of the suit property in the year 2001, they have filed the suit in OS.No.92/2001. Subsequently, it was returned and the plaintiffs have filed the same before the Senior Civil Court Jamkhandi but it was dismissed for non-prosecution. Against which they filed Civil.Misc.Petition and

same was restored and it was transferred to this court and renumbered as OS.No.337/2022. No doubt the plaintiff No.1, 2, 3 & 5 died long back and their legal heirs were not brought on record.

12. It is specifically stated by the plaintiff No.4 & 7 in these applications that, during the pendency of the suit plaintiff No.1, 2, 3, 5 & 6 have given up their right, title and possession over the suit property in favour of plaintiff No.4 by executing registered partition deed dated 11.05.2009. Accordingly, all the revenue records have been transferred to his name. Therefore, he being assignee or transferee, has rights to continue the suit proceedings because there is assignment by operation of law. Then, the plaintiff No.4 has sold the suit property in favour of plaintiff No.7 has moved an application to come on records and same was allowed.

13. Further it is also clear that, this plaintiff No.7 has impleaded as respondent No.7 in the RSA filed by these defendants. So, when the plaintiff No.1, 2, 3 & 5 died they have already given up their rights in favour of plaintiff No.4 and even the plaintiff No.6 has not come forward and he himself has given up his rights in favour of plaintiff No.4 by executing the said registered partition deed in favour of plaintiff No.4. So, on the date of death of plaintiff No.1, 2, 3 & 5 they

have already parted their title in favour of plaintiff No.4, though the defendant No.1 to 4 & 6A have filed the memo's to abate the suit as no legal heirs of deceased plaintiff No.1, 2, 3 & 5 brought on record.

14. So, the plaintiff No.4 became assignee to continue the proceedings in the suit and the plaintiff No.7 being the purchaser of suit property during the pendency of the suit and he can proceed with the suit. No doubt still the title of the suit has not been declared in this suit but it is subject to result of the suit. That the learned counsel of the plaintiffs has relied the decision reported in **(1983) AIR (SC) 124 in between Khemchand Shankar Choudhari and Another vs Vishnu Hari Patil and Others**. After perusal of the said decision, assignee or transferee gets rights to continue the suit. So, as per the said decision the transferee is the representative in interest of party from whom he has acquired the interest. In this case in hand, the plaintiff No.4 being assignee and plaintiff No.7 being the purchaser of the suit property are only proper persons to proceed with the suit.

15. Further he relied the decision reported in **(2015) AIR (SC) 3747 in between Sharadamma vs Mohammed Pyrejan and Others**, in which it is held that;

Civil Procedure Code, 1908- Order 22, Rules 10 and 11- Substitution- There cannot be dismissal of suit or appeal on account of failure of assignee to file application to continue proceedings- It would be open to assignor to continue proceedings notwithstanding fact that he ceased to have any interest in subject-matter of dispute- He can continue proceedings for benefit of assignee- Even if no step is taken by assignee, suit may be continued by original party and person upon whom interest has devolved will be bound by decree, particularly when such party had knowledge of proceedings- Originally, person is bound by decree until and unless it is shown that decree was based upon fraud or collusion.

16. Further he relied the decision reported in **(2008) 1 KantLJ 146 in between K.S. Lokaiah vs M.B. Shivaraya and Others**, in which it is held that,

Civil Procedure Code, 1908 (CPC)- Sections 146, 151, Order 1 Rule 10, Order 22 Rule 10, Order 23 Rule 4- Limitation Act, 1963- Sections 21, 21(1), 21(2)- Pendency of a proceedings- There is an assignment, creation or devolution of interest during the pendency of a proceedings, the person in whose favour such interest has created or devolved with the leave of the court may continue the proceedings- Any person who has purchased the property during the pendency of a proceedings, pendente lite is entitled to come on record notwithstanding the fact that he was not a party in the proceedings- A transferee pendente lite of an interest in an immovable property which is the subject-matter of a suit is a representative in interest of the party from whom he has acquired that interest- A person on whom any interest has devolved on account of a transfer during the pendency of any suit or a proceeding can participate in the execution proceedings even though his name may not have been shown in the decree, preliminary or final- The execution proceedings are still pending and in the

said proceedings an application is filed by the applicant to come on record as a successor in interest in respect of a portion of the suit property- Writ Petition stands allowed.

17. Further he relied the decision reported in **(2005) AIR (SC) 2209 in between Amit Kumar Shaw and Another vs Farida Khatoon and Another**, in which it is held that;

Civil Procedure Code, 1908 (CPC)- Order 1, Rule 10- Impleadment of transferee pendente lite- Application for substitution filed by respective appellants in second appeal- Delay for approaching court explained properly, sufficiently and satisfactorily- Appellants, who are transferees pendente lite should be made parties to pending appeals, because presence of appellants is absolutely necessary in order to decide appeals on merits- High Court committed an error in rejecting application for substitution on a wrong premise treating it as one of addition of parties- Impugned order set aside and appellants permitted to come on record by way of substitution.

18. Further he relied the decision reported in **2020 KAR 1398 in between Smt. Jayamma Venkatram and Others vs Smt. Ashraf Jahan Begum and Others**. Further he has relied the decision reported in **(2016) AIR (SC) 1717 in between Government of Andhra Pradesh and Others vs Pratap Karan and Others**, in which it is held that;

Suit for Rectification of Revenue- Plaintiffs joined together and filed suit for rectification of the revenue record by incorporating their names as the owners and

possessors in respect of the suit land on the ground inter alia that after the death of their predecessor in title, who was admittedly the Pattadar and Khatadar, the plaintiffs succeeded the estate as sharers being the sons of Khatadar. Indisputably, therefore, all the plaintiffs had equal shares in the suit property left by their predecessors. Hence, in the event of death of any of the plaintiffs, the estate is fully and substantially represented by the other sharers as owners of the suit property. Therefore, of the view that by reason of non-substitution of the legal representative(s) of the deceased plaintiffs, who died during the pendency of the appeal in the High Court, entire appeal shall not stand abated. Remaining sharers, having definite shares in the estate of the deceased, shall be entitled to proceed with the appeal without the appeal having been abated. Therefore, not find any reason to agree with the submission made by the learned counsel appearing for the appellants.

19. So, the plaintiff No.1, 2, 3 & 5 have no survival interest in the suit property as before their death, they have executed the partition deed in the year 2009 in favour of plaintiff No.4 and given up their right, title and interest over the suit property. So, the plaintiff No.4 is assignee who had absolute right to continue with the suit and he has executed the registered sale deeds in favour of plaintiff No.7 during the pendency of the suit. So, in the said proposed amendment the plaintiff No.4 & 7 are intending to plead subsequent events held in between plaintiff No.1 to 6 and subsequently, in between plaintiff No.4 & 7 as discussed above. Therefore, the plaintiff No.4 & 7 have

made out sufficient grounds to allow IA.No.IX & XII. Hence, my finding on **point No.1 is in the Affirmative on IA.No.IX & XII.**

20. Point No.2 on IA.No.IX & XII: In view of the above discussion and finding given to said point, the following is made;

ORDER

IA No.IX filed under order 22 rule 10 of CPC, R/w. section 21 (1) (2) of Limitation Act, and IA.No.XII filed 6 rule 17 of CPC by the plaintiff No.4 & 7 are hereby allowed and accordingly, they are permitted to continue with the suit proceedings. Further they are permitted to amend the plaint as stated in the amendment slip.

No order as to costs.

(Order dictated to the Stenographer, transcribed and computerized by her, then corrected and pronounced by me in the Open Court on this 04th day of March 2024.)

Sd/-

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