

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

DATED THIS THE 14th DAY OF FEBRUARY 2024.

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

O.S.No.189/2021.

Plaintiff:

1. Shekhar S/o: Satteppa Naik,
Age: 66 years, Occ: Agriculture,
R/o: Devaraderhatti, Tq: Athani,
Now residing at Rabkavi, Tq: Rabkavi-
Banhatti, Dist: Bagalkot.

(By pleader **Sri. V.D.P.**)

-Versus -

Defendants:

1. Smt. Chandrawwa W/o: Shreemant Naik,
Age: 70 years, Occ: Agriculture,
R/o: Devaraderhatti, Tq: Muragundi,
Dist: Bagalkot.
2. Sidraya S/o: Shreemant Naik,
Age: 56 years, Occ: Agriculture,
3. Laxman S/o: Shreemant Naik,
Age: 54 years, Occ: Agriculture,
4. Srishail S/o: Shreemant Naik,
Age: 52 years, Occ: Agriculture,

5. Hanamant S/o: Shreemant Naik,
Age: 50 years, Occ: Agriculture,
6. Appasaheb S/o: Satteppa Naik,
Age: 82 years, Occ: Agriculture,
7. Kakasaheb S/o: Satteppa Naik,
Age: 80 years, Occ: Agriculture,
8. Smt. Basawwa W/o: Balappa Naik,
Age: 65 years, Occ: H/W,
9. Smt. Sanyawwa W/o: Mallappa Naragatti,
Age: 54 years, Occ: H/W,
10. Giramalla S/o: Balappa Naik,
Age: 50 years, Occ: Agriculture,
11. Basaling S/o: Balappa Naik,
Age: 48 years, Occ: Agriculture,
12. Parameshwar S/o: Satteppa Naik,
Age: 76 years, Occ: Agriculture,
13. Mallappa S/o: Satteppa Naik,
Age: 74 years, Occ: Agriculture,
14. Bhimappa S/o: Satteppa Naik,
Age: 72 years, Occ: Agriculture,
15. Smt. Laxmawwa W/o: Shyamarao Naik,
Age: 65 years, Occ: H/W,
16. Sadashiv S/o: Shyamarao Naik,
Age: 45 years, Occ: Agriculture,
17. Ishwar S/o: Shyamarao Naik,
Age: 42 years, Occ: Agriculture,

All are R/o: Devaraderhatti,
Post: Muragundi,Tq: Athani,

18. Smt. Bourawwa W/o: Basappa Magadum,
Age: 43 years, Occ: H/W, R/o: Bandigani
Cross, Tq: Rabkavi-Banhatti,
Dist: Bagalkot.
19. Smt. Kamalawwa W/o: Mallappa Malligeri,
Age: 40 years, Occ: H/W, R/o: Baligeri,
Tq: Athani, Dist: Belagavi.
20. Gurupadappa S/o: Mallappa Magadu,
(Since deceased)
21. Smt. Sharada W/o: Late Shivappa
Magadum, Age: 62 years, Occ: H/W,
R/o: Yallatti, Tq: Rabkavi-Banhatti,
Dist: Bagalkot.
22. Suresh S/o: Shivappa Magadum,
Age: 32 years, Occ: Agriculture,
R/o: Yallatti, Tq: Rabkavi-Banhatti,
Dist: Bagalkot.
23. Smt. Shobha W/o: Basappa Naik,
Age: 30 years, Occ: Agriculture,
R/o: Devareddaratti Post: Muragundi,
Tq: Athani, Dist: Belagavi.
24. Smt. Suvarna W/o: Ramesh
Champannavar, Age: 33 years, Occ: H/W,
R/o: Shankarhatti, Tq: Athani,
Dist: Belagavi.
25. Jayashree W/o: Suresh Parade,
Age: 26 years, Occ: Agriculture,
R/o: Shankarhatti, Tq: Athani,
Dist: Belagavi.
26. Ramu @ Ramappa S/o: Gurupadappa
Magadum, Age: 51 years, Occ: Agriculture,

R/o: Bandigani Cross, Tq: Rabkavi-Banhatti, Dist: Bagalkot.

27. Smt. Sumitra W/o: Satyappagouda Biradar, Age: 60 years, Occ: H/W, R/o: Koligudda, Tq: Raibag, Dist: Belagavi.
28. Smt. Sonawwa W/o: Gurupadappa Magadum, Age: 50 years, Occ: H/W, R/o: Yallatti (Totad House), Tq: Rabkavi-Banhatti, Dist: Bagalkot.
29. Smt. Yallawwa W/o: Shekhar Nayak, Age: 49 years, Occ: H/W, R/o: Ashraya Mane No.636- Rabkavi, Tq: Rabkavi-Banhatti, Dist: Bagalkot.
30. Smt. Kamalawwa W/o: Shreemant Patil, Age: 47 years, Occ: H/W, R/o: Belagali, Tq: Mudhol, Dist: Bagalkot.
31. Rajendra S/o: Gurupadappa Magadum, Age: 45 years, Occ: Agriculture, R/o: Yallatti, Tq: Rabkavi-Banhatti, Dist: Bagalkot.
32. Ravindra S/o: Gurupadappa Magadum, Age: 43 years, Occ: Agriculture, R/o: Yallatti, Tq: Rabkavi-Banhatti, Dist: Bagalkot.
33. Smt. Jayashree W/o: Late Ashok Magadumma, Age: 50 years, Occ: Service, R/o: C/o: Kallappa Master Chikkareddy, Post: Sarawad, Tq & Dist: Vijayapur.
34. Soumya D/o: Late Ashok Magadumma, Age: 25 years, Occ: Student,

R/o: C/o: Kallappa Master Chikkareddy,
Post: Sarawad, Tq & Dist: Vijayapur.

35. Soujanya D/o: Late Ashok Magadumma,
Age: 20 years, Occ: Student,
R/o: C/o: Kallappa Master Chikkareddy,
Post: Sarawad, Tq & Dist: Vijayapur.
36. Laxman S/o: Allappa Magadum,
(Since deceased by his LR's)
- 36(A). Allappa S/o: Laxman Magadum,
Age: 22 years, Occ: Agriculture,
R/o: Yallatti, Tq: Rabkavi-Banhatti,
Dist: Bagalkot.

(By pleader **Sri. S.H.K.** for D.28,
D.33 to D.35. **Sri. D.M.J.** for D.26,
Sri. S.A.S. for D.27, **Sri. M.N.K.**
for D.29, **Sri. S.B.K.** for D.31 &
D.32, D.20 & D.36 Dead and D.1
to D.19, D.21 to D.25, D.30 placed
ex-parte)

IA.No.VII

Applicant :

Shekhar S/o: Satteppa Naik.

-versus-

Opponents :

Maruti S/o: Sakaram Honmore
and Others.

ORDER

1. This application is filed by the plaintiff under order 39 rule 1 & 2 of CPC to restrain the defendants or any body else claiming under them from interfering and obstructing with his joint possession and enjoyment of the suit schedule A & B properties till disposal of the suit.
2. The plaintiff in his affidavit filed along with this application has stated that, the suit schedule A & B properties are the joint family properties of himself and defendants and they are joint owners and in joint possession of the suit properties till today. So, there is no division or partition in between himself and defendants and hence, he is having 1/22nd legitimate share in both A & B schedule properties. When he has demand to provide his share, the defendants have postponed for the same and they have not heeded for his request and hence, he filed the suit. After filing of the suit, the defendants colluding with each other are obstructing his joint possession and enjoyment of the suit properties. Therefore, he has made out prima-facie case and balance of

convenience also lies in his favour and if the application is not allowed, he will face much hardship and loss. Hence, prays to allow the application.

- 3.** The defendant No.31 & 32 in their objections have denied entire contents of affidavit of plaintiff filed along with IA.No.VII. They have contended that, without evidence at this stage it is not proper to hold that, the plaintiff is in joint possession and enjoyment of the suit properties and the plaintiff has not made out prima-facie case and if the application is allowed they will face much hardship and loss.
- 4.** The defendant No.26 in his objections has denied that, the plaintiff is in joint possession and enjoyment of the suit properties and the suit properties are the joint family properties of the plaintiff and defendants. Further he has contended that, the suit land in RS.No.26/1, 41/2 and 41/1/C have been purchased by him and hence they are his absolute properties. That, the defendant No.27 has filed the suit in OS.No.64/2016 and same was decreed and against which RA.No.5037/2021 is pending for consideration. The

said proceedings are pending since long back and defendant No.1 to 25 have not got impleaded, which shows that they have consented and if there is any right it is barred by limitation. Therefore, the plaintiff has not made out prima-facie case and hence, it is prayed to dismiss IA.No.VII filed by the plaintiff.

5. Heard both sides on IA.No.VII.

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

1. Whether the plaintiff has established prima-facie case?
2. Whether the balance of convenience lies in favour of plaintiff?
3. Whether the plaintiff will face loss and injury, if the application is rejected?
4. What order?

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

Point No.1 - In the Negative.

Point No.2 - In the Negative.

Point No.3 - In the Negative.

**Point No.4 - As per final order,
for the following:**

REASONS

8. Point No.1 to 3 :- All these points are inter-connected with each other. Hence, in order to avoid repetition of facts and for the sake of convenience, all these points are taken together for consideration at one stretch.

9. It is the case of the plaintiff that, he has filed the suit for partition and separate possession in all the suit properties. He has shown the Genealogy along with the plaint and it is also pleaded about the said Genealogy that, one Mallappa is propositus of their family who died long back leaving behind a daughter by name Hanamawwa and a son by name Gurupadappa. Then said Hanamawwa W/o: Satteppa Naik died long back leaving behind 9 sons who are the plaintiff and defendant No.6 to 8, 13, 14 and Shreemant, Balappa, Shyamrao. Then Shreemant Naik died long back leaving behind the defendant No.1 to 5 as his legal representatives.

10. Then Balappa Naik died long back leaving behind the defendant No.9 to 12 as his legal representatives. Then Shyammarao Naik died long back leaving behind the defendant

No.15 to 19 as his legal representatives. Hence, the plaintiff and the defendant No.1 to 9 are legal representatives of deceased Hanamawwa W/o: Satteppa Naik which is specifically explained in the Genealogy.

11. Further it is contended that, Gurupadappa who are the brother of Hanamawwa got married 3 wives namely Siddawwa, Shantamma and Sonawwa. The 1st wife Siddawwa died long back leaving behind 2 sons namely Shivappa and Ram who is defendant No.26. Then said Shivappa died long back leaving behind his wife and a son and 3 daughters who are the defendant No.21 to 25 in this case as his legal representatives. After the death of 1st wife said Gurupadappa got married to Shantamma and she died long back leaving behind a daughter who is the defendant No.27 in this case as her legal representative. After the death of 2nd wife said Gurupadappa got married to Sonawwa who is defendant No.28 and she gave birth to Ashok and the defendant No.29 to 32 as her legal representatives.

12. Further it is stated that, one of her son Ashok also died leaving behind the defendant No.33 to 35 as his legal

representatives. The suit schedule A & B properties are joint family properties of the plaintiffs and the defendants. The plaintiff is having a definite share in the suit schedule A & B properties under section 6 of Hindu Succession Act, but the defendant No.20 and the husband of the defendant No.21 and the husband of the defendant No.33 and the defendant No.31 & 32 illegally and high handedly got entered their names in the suit schedule A & B properties without the knowledge and consent of the plaintiff.

13. Now the defendant No.20 to 26 and the defendant No.28 & 31 to 35 and defendant No.20 to 26 and the defendant No.28 & 31 to 35 have not given the legitimate share to the plaintiff. Hence, the suit schedule A & B properties are the joint family properties of the plaintiff and the defendants. Hence, the plaintiff and the defendants are the joint owners and in joint possession of the suit schedule A & B properties till today. There is no division or partition in between himself and the defendants in the suit schedule A & B properties till today. That, the defendant No.20 to 26 and 28 and 31 to 35 have denied his right of share and hence, he filed the suit.

14. The defendant No.29 has filed her written statement and she has admitted the entire case of the plaintiff and she has also claimed her share in the suit properties. The defendant No.27 in her written statement has contended that, she has filed the suit for partition and separate possession in OS.No.17/2012 before the Senior Civil Judge Jamkhandi and same was transferred to this court and renumbered as OS.No.64/2016 against her father and brothers. After full fledged trial, the suit was decreed and 1/9th share was allotted to her and accordingly she filed the FDP proceedings which is pending for consideration.

15. That, said Hanamawwa who is sister of father of Gurupadappa was given in marriage to one Naik of Devaradderhatti village in Athani taluka and much prior to introduction of Hindu Succession Act 1956 and she died in the year 1998 much prior to the new Amended Act of 2005 has been brought into force as amended to Section. 6(A) of the said Act. Therefore, when the original Act and the subsequent Amended Act of Hindu Succession Acts are not applicable to the deceased Hanamawwa and hence the plaintiff who is descendant of Hanamawwa is not entitled for any share and the plaintiff is

stranger to their family and the suit properties. Therefore, the plaintiff has no right to claim the share in the suit properties as he is not the joint family member.

16. Further it is contended that, one Smt. Yallawwa who is defendant No.29 in his suit was the defendant No.10 in the said suit in OS.No.64/2016 and share was also allotted to her and the plaintiff being her husband who knows about previous proceedings has filed this suit and hence, the suit is hit by principles of Res-Judicata and accordingly, he prays to dismiss the suit of the plaintiff.

17. The defendant No.31 & 32 have also denied the contents of plaint of the plaintiff and they have claimed the counter contending that, the propositus Mallappa on 16.04.1987 has voluntarily executed the registered Will in their favour and in favour of husband of defendant No.33 and defendant No.34 and 35 and relinquished the suit in RS.No.25/1/5 measuring 37-Gs, RS.No.52 measuring 07-A 28-Gs, RS.No.57/1/1 measuring 04-A 10-Gs, RS.No.62/1 measuring 03-A 10-Gs all are situated at Yallatti village and RS.No.41/2B measuring 08-A, RS.No.92/2

measuring 02-A 05-Gs both are situated at Asangi village and house property old No.210 (New No.429) measuring 29 X 30.9 Sq.ft., at Rabkavi-Banhatti taluka.

18. Accordingly, after the demise of the propositus they became the absolute owners of the said properties and mutation entries were also made in their names and hence, the plaintiff has suppressed all those material facts and also contended that, the plaintiff has left other family properties and hence, the suit is bad for partial partition. Now, the issues are also framed and the plaintiff got examined as PW-1 and when the case is posted for cross-examination, he filed this application. That, the defendant No.27, 31 & 32 have strongly objected for this application contending that the plaintiff and lineal decedents of Hanamawwa are not the joint family members along with the legal heirs of Gurupadappa and ancestors of the plaintiff and other defendants by name Hanamawwa died much prior to amendment to the Section. 6(A) of Hindu Succession Act, and when she had no share in the suit properties, then this plaintiff who is son of said Hanamawwa is not entitled for any share.

19. So, there are triable issues involved in this suit and moreover the plaintiff has not produced any documents to show that, he is in joint possession and enjoyment of the suit properties along with the defendants. Apart from that, this defendant No.29 who is daughter of Gurupadappa and wife of this plaintiff and she was also the party in OS.No.64/2016, in which also she was allotted the share and this plaintiff being husband of the defendant No.29 was well aware of those proceedings and again he filed this suit contending that, the suit properties are the joint family properties of himself and the defendants. So, without full fledged trial it is not proper to hold that, the plaintiff is in joint possession and enjoyment of the suit properties and the defendants are obstructing his joint possession of the suit properties. Therefore, the plaintiff has not made out prima-facie case and balance of convenience also not leans in his favour. If the application is allowed, there are every chances that the plaintiff may cause obstruction to the possession of the defendants. Hence, my finding to **point No.1 to 3 are in the Negative.**

20. Point No.4: In view of the reasons and findings given to point No.1 to 3, the following is made-

ORDER

IA.No.VII filed by the plaintiff under order 39 rule 1 & 2 of CPC is hereby dismissed.

No order as cost.

(Dictated to the Stenographer, transcribed and computerized by her, corrected and then pronounced by me in the open court on 14th day of February 2024).

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