

**IN THE COURT OF THE ADDL. SENIOR CIVIL
JUDGE AT JAMKHANDI.**

Present

Sri.A.SAMIULLA

B.Sc., LL.B.,

Addl. Sr. Civil Judge, Jamkhandi.

Dated: 12th Day of July 2021

OS.No.88 of 2020

Smt.Bourawwa w/o Channayya Math @ Ganachari,
& Another.

..... Plaintiffs

V/s

Smt.Mahadevi w/o Sidramayya Hiremath,
& Others.

..... Defendants

IA.No.II

Smt.Shobha w/o Sangayya Hiremath.

..... Applicant/D2

V/s

Smt.Bourawwa w/o Channayya Math @ Ganachari,
& Another.

..... Opponents/Plts

Order on IA-II; u/O 40 Rule 1 r/w Section 151 of CPC:

Defendant-2 moved this application seeking to appoint a receiver to manage the day to day income and expenditures, to maintain other transactions, to

maintain the statement of accounts and to submit accounts of disputed retail provision shop in the possession of defendant-4.

2. Plaintiffs resisted the application by filing statement of objections. Defendants-1 & 4 adopts the objections filed by the plaintiffs.

3. Heard arguments from both side.

4. Following points arise for consideration:

1. *Whether defendant-2 made out a case to appoint a receiver in respect of wholesale provision shop as prayed?*
2. *What order?*

5. Findings to the above points are as under;

Point-1: Negative.

Point-2: As per below for the following;

REASONS

6. Point-1: At the outset; suit is filed for partition and separate possession of plaintiffs 1/5th share each in the suit properties by asserting that; the propositus Channayya died on 29.07.20 leaving behind wife

Bourawwa (P1) and daughters Mahadevi (D1), Sushila (P2), Shobha (D2) and Neelabai (D3). They constituted joint family, they are in joint possession and there is no severance of joint family status. Suit properties are ancestral joint family properties of propositus, as such they got 1/5th share each. Defendant-4 is son of plaintiff-2. Suit properties are in the name of propositus except the land bearing RS.No.447/2/1 (9As 29Gs) of Gothe village, which is in the name of plaintiff-1, as it is purchased by the propositus in her name. Propositus was running provisional shop in VPC.No.192 of Gothe village, the defendant-4 behind the back of plaintiffs and other defendants got the license of provisional shop in his name, as such he is arrayed as a party to the suit. Said shop belongs to the plaintiffs and defendants-1 to 3. They demanded partition but to no use, hence suit is filed.

7. Defendant-2 resisted the suit by filing written statement seeking counter claim. Defendant-3 adopts the written statement of defendant-2. They admits the genealogy shown in the plaint and also the nature of suit properties. But contended that the family is having other properties, which are not included in the suit. They contended that; though in the presence of plaintiff-2 her son defendant-4 is not a necessary party to the suit but he being the anchor of fraud played in the joint family his presence is also necessary in the suit. After filing of suit they came to know about the license of provision shop obtained by the defendant-4 behind the back of plaintiffs & other defendants, as such his (D4) presence is necessary for effective adjudication. Denying other averments they contended that; the husband of plaintiff-2 being addicted to bad vices had suffered huge loss in business, due to this the defendants-2 & 3 advised their father to allow the

family of plaintiff-2 to reside in the parental home, as such they are in parental home from the past 22 years. After the death of propositus; the plaintiff-2 and her son (D4) colluding together and without disclosing the particulars of family properties, income of provision shop, agricultural income and fixed deposit of Rs.One Crore, they hurriedly got prepared partition deed (Apsath Watni) to defraud the legitimate share of defendants-1 to 3. Apart from this they also obtained signatures of defendants-2 & 3 on blank stamp paper of Rs.200/-. Notice was issued calling upon them to disclose the purpose for which signatures were obtained on blank stamp paper. Till this day they have not replied the notice. Propositus used to keep cash amount of Rs.50 lakhs in the house. Plaintiff-2 and defendant-4 have taken said amount. Among these grounds they prayed to dismiss the suit.

8. Defendant-2 filed the application at hand for the aforesaid relief by stating that the propositus was running retail provision shop but from the last one year due to ill health he was bedridden and breathed his last on 29.07.20. From one year the plaintiff-2 and defendant-4 are not disclosing the transactions of provision shop and to deprive the defendants-2 & 3 from taking profits of said shop they are mismanaging the affairs of shop. If questioned they threatened to close the shop. Hence, defendant-2 prays to appoint a receiver.

9. Plaintiffs objected the application by contending that; the deceased Channaya was not running shop from 50-60 years but from the year 1992 to 2005 and then he close the same and got canceled license by submitting a declaration in the year 2005. Accordingly, Commercial Tax Office issued a

certificate on 1.4.05 to close the shop. There is no any provision shop business is running in the name of plaintiffs. In the year 2015-16 defendant-4 started provision shop business separately in his name, which is not at all concerned to the plaintiffs and they came to know about this after filing of suit. They came to know that defendant-4 is running business in VPC.No.192 on rental basis and the rent agreement is executed by the deceased Channaya on 16.11.16 for a period of ten years on monthly rent of Rs.1,000/-. Since the business belongs to defendant-4 question of furnishing accounts does not arise. In plaint at para-7 it is clearly stated that; defendant-4 is made as party in this case as he has got Kirana shop license in VPC.No.192; originally it was in the name of Channayya. At the time of filing suit plaintiffs were under impression that; defendant-4 is running Kirana shop under license in the name of deceased

Channaya. But after verifying records from Sales Tax Department they came to know that the deceased Channaya stopped Kirana business in the year 2005 itself. Among these grounds they pray to dismiss the application.

10. Defendants-1 & 4 adopts the objections filed by the plaintiffs. Defendant-3 filed memo to allow the application.

11. Order 40 Rule 1 CPC empowers the Court to appoint receiver when it is just and convenient. It has not prescribed any criteria for the purpose of appointment of receiver. Court can appoint a receiver where it appears to be just and convenient. It is well settled that; the question of appointing a receiver is a matter resting in the discretion of the Court and a receiver should not be appointed, unless the party has an excellent chance of succeeding in the suit.

12. Now the question herein is whether it is just and convenient to appoint a receiver for management of disputed provision shop, which is in possession of defendant-4. To answer said question let us scrutiny the rival contentions raised by the respective parties.

13. In plaint it is pleaded that the deceased propositus was running a provision shop but defendant-4 without the knowledge of plaintiffs and other defendants got shop license in his name but it is not exclusively belongs to him.

14. Defendant-2 in written statement at para-6 contended that; after filing of suit by the plaintiffs she came to know about the license of provision shop obtained by defendant-4 without consent of plaintiffs and other defendants.

15. In statement of objections filed by the plaintiffs to the present application they stated that; earlier they

were under impression that the defendant-4 got license in his name behind their back but after verification of documents they came to know that the deceased propositus closed business in the year 2005 and the defendant-4 started business in the year 2015-16 by taking the property bearing VPC.No.192 for rent from the deceased propositus and it is his exclusive business, due to this they (plaintiffs) already filed application to struck out the defendant-4.

16. To prima facie justify the above contention plaintiffs and defendant-4 relied on the documents viz., Xerox copy and original rent agreement dated 16.11.16 executed by deceased Channayya in favour of defendant-4 in respect of property bearing VPC.No.192 to run provision shop for a period of ten years for monthly rent of Rs.1,000/-. Web-site copy of dealer search of Commercial Tax Department, wherein

it is indicated that the trade registered in the name of CM Math and MS Hiremath situated at 192, Main road, Gothe, Tq;Jamkhandi is de-registered on 1.4.05. Xerox and original Tax registration certificate dated 20.12.16, wherein it is certified that Sri.Arun (D4), Proprietor; Sri.Daneshawari Kirana Stores situated at 192 Gothe Savalgi, Jamkhandi has been registered as a dealer. Letter issued by the Thasildar, Jamkhandi stating that Kerosene license No.43/86/6 issued in favour of CM Math and MS Hiremath was canceled. Original Food Registration issued by Food Safety Officer, Jamkhandi in the name of defendant-4, which is registered on 09.01.14, wherein location of Food business is shown as AB Gourimath Kirana shop, Gothe and kind of business is indicated as sales of sugar, Rice, Pulses, Oil & other Kirana food for sale.

17. On the contrary defendant-2 relied on the

documents i.e., page of dairy containing the amount in due to the provision shop. This document does not bear any seal and signature. The Karnataka Essential Commodities (Public Distribution System) Control Order, 1992 (Form-B), wherein CM Math and MS Hiremath were authorized to run fair price depot at property No.596B, Gothe, Tq;Jamkhandi issued by the Deputy Commissioner, Vijayapur. This document relates to fair price depot at property bearing No.596B for distribution of Essential Commodities at Gothe village. The disputed business is Provision shop at property bearing VPC.No.192. Show cause notice dated 4.5.13 issued by the Deputy Commissioner, Bagalkot to CM Math & MS Hiremath for non renewal of license obtained to sell kerosene. Application filed for renewal of license to sell kerosene. Copy of license dated 20.4.1987 issued by Food Department in the names of CM Math and MS Hiremath to sell kerosene

in VPC.No.596B. These documents are also not related to provision shop. Copy of ration card dated 15.10.09, wherein Channayya, Bowravva, Basavarj, Sushila (P2) and Arun (D4) are shown as family members. At the moment this document no way helps the defendant-2 in respect of disputed Provision shop.

18. It is worth to note that at this stage by simple comparison of documents supra one can say without any hesitation that defendant-2 fails to demonstrate a prima facie case, which leads for the appointment of a receiver as sought because the documents produced by her relates to fair price depot and selling of kerosene at property bearing VPC.No.596B whereas disputed provision shop is at property bearing VPC.No.192.

19. Defendant-2 argued that in the plaint itself the plaintiffs admit that the Provision shop belongs to the

deceased and defendant-4 without their and other defendants consent has obtained license, as such appointment of receiver is warranted. It is true in plaint they have stated said fact but subsequently they explained under what circumstances they have stated so and they produce documents which prima facie supports their subsequent contention. Under these circumstances only on the basis of plaint averments without considering the documents the discretionary relief of appointment of receiver cannot be granted. Remedy of appointment of receiver is harsh one, it should be allowed in exceptional cases. In addition to this a full-fledged trial is warranted to unfold the truth regarding disputed Provision shop business whether it is a family business or exclusive business of defendant-4. If it is a family business then the defendant-2 can seek mense profits and recover the same from the defendant-4. In counter claim the

defendant-2 stated that the approximate annual income of Provision shop is Rs.3,50,000/-. By demonstrating that also she can claim mense profits. Thus, it can be conclude that no special circumstance exists, whereby interference with the possession of the defendant-4 is required and to take the business under the custody of the Court, by appointment of a receiver.

20. Defendant-2 relied on decisions reported in **i) 2005(4)KCCR 2382** (Sreenivas Lad V/s Eknath), *wherein suit for partition was filed by son of third wife against children of first wife and second wife of deceased Vital Rao in respect of lands, buildings & a mining lease. Appointment of receiver was sought in respect of mining lease, which is exclusively in the hands of respondents-1 & 2. In said circumstances the respondents-1 & 2 themselves were appointed as receivers, the accounts in respect of income shall be jointly maintained by the accountants of respondents-1 & 2 along with a nominee of*

appellant, who shall be a Chartered Accountant, to maintain the same under the joint signatures of the two. ii) 2015 AIR(SC) 1394, Sherali Khan V/s State of Maharashtra), wherein it is held that; even after final decision the Court has discretion to take further assistance of the receiver as and when the need arises. iii) 2001 AIR(SC) 1361, Kasturi Bai V/s Anguri Chaudhary, wherein it is held that the question whether the suit property is the exclusive property of late Kishore Chand; whether the defendants-1 & 2 are entitled for any share in the suit property will be decided in the suit. The fact remains that appellant-1, who is the widow of Kishore Chand and mother of plaintiff is very old lady who cannot take upon herself the task of collecting rent form the tenants regularly. The defendants-2 & 3, keeping in view the allegations made by the plaintiffs against them, cannot be entrusted with the work, as such receiver was appointed. In the case at hand at the moment the documents prima facie indicates that the disputed business belongs to defendant-4. Thus, the decisions relied by defendant-2 are not helpful to her because

the facts at hand and facts of said cases are different. In the backdrop of discussion supra point-1 is answered in negative.

21. Point-2: By virtue of above findings, Court proceeds to pass the following;

ORDER

IA-2; u/O 40 R 1 r/w Section 151 CPC filed by the defendant-2 is rejected.

No order as to costs.

(Dictated to the Stenographer and directly typed by her, corrected and initialed by me and then pronounced in the open Court on 12th July 2021).

Sd/-

(A.SAMIULLA)

**Addl. Senior Civil Judge
Jamkhandi.**

/skn/