

KABK710001122011



O.S./25/2011

{CASE_CAUSE_TITLE}

**IN THE COURT OF THE PRINCIPAL CIVIL JUDGE &
JMFC, JAMKHANDI, AT: JAMKHANDI**

PRESENT :

SRI ABDUL RAHIMAN. A. MULLA

B.A.L, L.L.B (Hons.)

**Prl. Civil Judge & JMFC,
Jamkhandi**

Dated this the 8th day of August- 2022

O.S. No.25/2011

1. Laxman S/o Yallapa Wagennawar,
Age: 27 years, Occ: Agriculture,
Coolie, resident of Jamkhandi,
Tq: Jamkhandi, Dist: Bagalkot.
2. Smt. Kallawwa W/o Yallapa Wagennawar,
Age:48years, Occ: Household work,
R/o Jamkhandi, Tq: Jamkhandi,
Dist: Bagalkot.

...Plaintiffs.

(By Sri.C.S.B., Advocate)

- Vs -

1. Shri. Yallapa S/o Balappa Wagennawar,
Age:60 Years, Occ: Agriculture,
R/o Outi Galli, Jamkhandi,
Tq: Jamkhandi, Dist: Bagalkot.

2. Smt. Laxmibai Calling herself
as the wife of Yallappa Wagennavar,
Age: 54 years, Occ: House hold work,
R/o Junjarwad, Tq: Athani, Dist: Belgavi,
Now R/o Awati Galli, Jamkhandi.
3. Shri. Prakash calling herself as the son of
Yallappa Wagennavar, age: 42 Years,
Occ:Trade, R/o Junjarwad,
Tq: Athani, Dist: Belgavi,
Now R/o Awati Galli, Jamkhandi.
4. Shri. Ramesh calling herself as the son of
Yallappa Wagennavar, age: 42 Years,
Occ: Coolie, R/o Junjarwad,
Tq: Athani, Dist: Belgavi,
Now R/o Awati Galli, Jamkhandi.
5. Shri. Siddu calling herself as the son of
Yallappa Wagennavar, age: 26 Years,
Occ:Coolie, R/o Junjarwad,
Tq: Athani, Dist: Belgavi,
Now R/o Awati Galli, Jamkhandi.
6. Shri. Hanmant calling herself as the son of
Yallappa Wagennavar, age: 26 Years,
Occ:Coolie, R/o Junjarwad,
Tq: Athani, Dist: Belgavi,
Now R/o Awati Galli, Jamkhandi.
7. Shri. Raju calling herself as the son of
Yallappa Wagennavar, age: 29 Years,
Occ:Coolie, R/o Junjarwad,
Tq: Athani, Dist: Belgavi,
Now R/o Awati Galli, Jamkhandi.

8. Smt. Malashree calling herself as the daughter of Yallappa Wagennavar, (now married to and named as Smt. Malashree W/o Basappa Tungali, alias Samanagil Age: 25 Years, Occ:Household work, R/o Bandigani, Now residing at Awati Galli, Jamkhandi.

... Defendants.

(D-1 By Sri.M.C.B., Advocate)

(D- 2 to D-8 - By Sri. P.P.N., Advocate)

I.A. No.VI

1. Shri. Laxman S/o Yallapa Wagennawar, and another.

.... Applicants/Original plaintiffs.

- Vs -

1. Shri. Yallapa S/o Balappa Wagennawar, and others.

.... Opponents/Original Defendants.

ORDERS ON I.A.NO.VI FILED BY PLAINTIFFS
UNDER ORDER 40 RULE 1 R/w SECTION 151 OF
C.P.C

This application is filed by plaintiffs praying this court to appoint a receiver for management, protection, preservation and improvement of suit landed property

bearing R.S. No.31/2 measuring 2 acres 17 guntas of Jamkhandi till disposal of suit.

2. In the affidavit annexed to the application, plaintiff No.1 averred that they have filed this suit against defendants for partition and separate possession and plaintiff No.1 is son of defendant No.1 and plaintiff No.2. They are undivided Hindu joint family members and in joint possession and enjoyment of suit property. Plaintiffs have got 1/3rd legitimate share in the same. Defendant No.2 is falsely claiming to be wife of defendant No.1 and defendant No.2 to 8 are claiming to be children of defendant No.1. They have got created false documents. Defendant No.1 with the help of defendant No.2 to 8 are grabbing all the income of suit property and causing wrongful loss to plaintiffs. Even lavani patra is created between defendant No.1, 4, 6 and 7. Defendants are in hurry to alienate the suit property and amongst these grounds, prayed to allow the application.

3. Defendant No.2 to 8 have filed objections to the application contending that only to delay the case, present application is filed. It is admitted by the plaintiffs that defendants are in actual possession of suit property, hence present application is not maintainable. The plaintiffs if they succeed in the suit, they are at liberty to recover mesne profits as per law. The present suit is remanded matter and only at the fag end of the case, present application is filed by plaintiffs and amongst these grounds, prayed to dismiss the application with exemplary costs.

4. Heard, perused the records placed before the court.

5. The points that arise for my consideration is as under :

1. Whether plaintiff have made out sufficient grounds to allow the application ?
2. What Order ?
6. My findings to the above points is as under :
Point No.1In the Negative.

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

REASONS

7. **Point No.1:** It is the specific case of plaintiffs that they have got legitimate share in suit property and defendants have colluded and created documents. Lavani patra is created between defendant No.1, 4 , 6 and 7 and they are in hurry to alienate the same. In support of their contention, plaintiffs have produced photo copy of Lavani patra.

8. Admittedly now when the suit is posted for arguments, present application came to be filed by plaintiffs contending that defendant No.2 to 8 have got created documents and grabbing the income of suit property and causing loss to them. Admittedly present suit came to be dismissed by my learned predecessor-in-office on 19-03-2013 and same was remanded back to this court by order dated 05-02-2020.

9. Further it is now the contention of plaintiffs that on the strength of lavani patra, defendants are grabbing all the income of suit property. On careful perusal of photocopy of lavani patra produced plaintiffs, it bears date 24-12-2018 and if at all defendants wanted to alienate the suit property, they would have alienated by now and no reasons are forthcoming from the side of plaintiffs as to why they have kept silent for all these years and thought of filing this application only when the case is posted for arguments. Plaintiffs are at liberty to claim mesne profits as per law.

10. The Hon'ble Court of Madras has enunciated 5 principles which have been described as panch sadachar, which should be borne in the mind of courts while exercising jurisdiction in appointing receiver in a decision reported in **AIR 1985 Mad 430** between **Krishnashwamy V/s Thangavelu** and has held that **"the question of appointing receiver is a matter**

resting in the discretion of court, that a receiver should not be appointed unless the party has excellent chance of succeeding in the suit, that plaintiff himself shall show that there was some emergency or danger or loss that may be caused to the right involved in the suit, that an order appointing receiver shall not be made if it has the effect of depriving a defendant of defacto possession, that however the position would be different of the property is shown to be in enjoyment of no one and court should always look into the conduct of parties, who seek for appointment of a receiver".

11. The ratio laid down in above said decision is aptly applicable to the case in hand, because by looking into the conduct of plaintiffs, no reasons are forthcoming from them as to what prevented them to file this application at earlier stage of the case.

12. Moreover only on the basis of lavani patra, plaintiffs are apprehending alienation of property. If that is the case, the purchaser would be binding by the decree passed by this court.

13. Further learned counsel for plaintiffs during the course of arguments relied upon decision reported in **2000 (1) KCCR 256** between **Sri. Nimbana Goudar V/s Appasaheb and others**, wherein trial court had allowed the application for appointment of receiver and Hon'ble High Court of Karnataka held that no grounds are made out for interfering with discretionary orders passed by court below.

14. I do adhere to the ratio laid down by Hon'ble High Court of Karnataka in the above said decision, but facts and circumstances of this is different and same is not applicable to the present set of facts. Hence the above said decision is nowhere helpful to the case plaintiffs.

15. On the contrary, learned counsel for defendants relied upon decision reported in **(2000) 9 SCC 566** between **Saleemabi V/s Pyari Begum and another**, wherein Hon'ble Supreme Court of India held that **"receiver could only be appointed if there occurs a prima-facie case in favour of plaintiffs"**. The ratio laid down in above said decision is aptly applicable to the case in hand, as plaintiffs have not made out prima-facie case at this stage of the case for appointment of receiver.

16. It appears that only to drag on the proceedings, the present application came to filed by plaintiffs. No bonafide grounds have been made out by plaintiffs to allow the application at this stage of the case. Hence for the above said reasons, I answer Point No.1 in the **'Negative'**.

16. **POINT No.2:** For the reasonings and findings given to point No.1, I proceed to pass the following :

ORDER

I. A. No.VI filed by plaintiff
under Order 40 Rule 1 R/w
Section 151 of C.P.C is hereby
rejected.

Parties to bear their own costs.

(Dictated to the Stenographer directly on computer and typed by him, and corrected, printout taken, signed by me and then pronounced in the open court on this the 8th day of August- 2022)

Prl. Civil Judge & JMFC,
Jamkhandi.