

**IN THE COURT OF THE II ADDL. DISTRICT & SESSIONS
JUDGE, CHIKKABALLAPURA, SITTING AT CHINTAMANI**

Dated this the 19th day of December 2024

Present

Smt.NAGAVENI, B.A., LL.B.,
II Addl. District & Sessions Judge, Chikkaballapura,
Sitting at Chintamani.

REGULAR APPEAL No.05/2024

Appellants:

1. Subbarayappa
s/o Slate B.Munivenkatappa,
aged about 68 years.

2. Nanjundappa
s/o late Slate B.Munivenkatappa,
aged about 63 years.

Both are r/at Varasandra village,
Sadali hobli,
Sidlaghatta taluk.

(Represented by Sri S.R.Byrareddy, Advocate)

Vs.

Respondents:

1. Munivenkataswamy
s/o late B.Munivenkatappa,
aged about 70 years.

2. Ravi
s/o late B.Munivenkatappa,
aged about 35 years.

3. Harish
s/o late B.Munivenkatappa,
aged about 33 years.
All are r/at Varasandra village,
Sadali hobli,
Sidlaghatta taluk,
Chikkaballapura District.

(Represented by Sri M.V.Manjuantha, advocate for R1, Sri
N.K.Devaraj, advocate for R2 & R3)

ORDER ON I.A.NO.III

I.A.No.III is filed by the appellants/applicants under Order 41 rule 5 of CPC praying for to stay the operation of the judgment and decree, dated 18.12.2023 passed in O.S.No.110/2019 by Senior Civil Judge & JMFC, Sidlaghatta till disposal of the appeal.

2. In the affidavit annexed to the said application the appellant No.2 has stated that the trial court has decreed the suit in O.S.No.110/2019 on 18.12.2023. In the said suit the appellants were defendant No.2 and 3. The said judgment and decree is an executable decree. The present respondent No.2 and 3 who were the plaintiffs in the said suit filed FDP No.11/2024 before the trial court after receipt of summons from this court. The appellants are having good case on merits. If the judgment and decree of the trial court is got executed then the appeal will become infructuous. Hence, for the above said reasons it is prayed to allow the application.

3. On the otherhand, the respondent No.2 and 3 filed objections to the said application. Wherein it is stated that the application is not maintainable either in law or on facts and the same is liable to be dismissed in limine. The appellants

deliberately sworn to false facts in the affidavit. The relief sought by the appellants is most unrighteous and unwarranted under law. The appellants have not assigned any valid reasons as contemplated in Sub-Rule 3(a) to 3(c) of Rule 5 of Order 41 of CPC for granting stay. The respondents are having pram facie case and balance of convenience lies in their favour. Hence, prayed to dismiss the application.

4. Heard both sides.

5. Following points arise for my consideration:

- 1) Whether the application filed by the appellants is tenable in the eye of law?
- 2) What order?

6. My answers to the above points are as under:

Point No.1 : Partly in affirmative.

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

REASONS

Point No.1:

7. At present appellants counsel taken specific contention that the trial court has decreed the suit in O.S.No.110/2019, dated 18.12.2023 for partition filed by the respondent No.2 and 3. The present appellants are defendant No.2 and 3 before the trial court. The appellants have preferred appeal against the

said judgment and decree. The respondent No.2 and 3 who are the plaintiffs have filed F.D.P.No.11/2024 before the trial court. The appellants are having good case on merits. The present appellants and father of the plaintiffs by name Munivenkataswamy i.e., respondent No.1 are brothers and both are children of late B.Munivenkatappa. All three brothers have partitioned the joint family properties under oral partition and later same is reduced into Palupatti, dated 04.09.2024. The said documents got marked as Ex.D1 and Ex.D2 before the trial court. The said partition is acted upon and revenue documents are changed as per the said oral partition. The three brothers are in possession of their respective shares. The trial court without considering the same has decreed the suit. Now, the appellants have received summons in F.D.P.No.11/2024. Hence, prayed to allow the application.

8. Present respondents taken specific contention that the relationship between the appellants and respondents are admitted. The properties listed in the plaint are ancestral undivided joint family properties between the appellants and respondents, who are the co-parceners and they are in joint possession and enjoyment of the properties. The said

properties have not yet been divided by metes and bound among them. The respondent No.2 and 3 are entitled to $1/3^{\text{rd}}$ share each out of $1/3^{\text{rd}}$ share of their father. The appellants and 1^{st} respondent in collusion with the revenue officials have changed the katha in their names in respect of the properties listed in the plaint schedule without dividing the lands equally and they have used fraudulent methods to deprive the share of respondents. The judgment passed by the trial court is in accordance with law. The appellants have not assigned any valid reasons as contemplated in sub-rule 3(a) to 3(c) of Rule 5 of Order 41 of CPC.

9. On perusal of order sheet it reveals that on 12.12.2024 the appellants counsel filed a memo along with xerox copy of the notice issued by the Assistant Director of Land Reforms, Sidlaghatta. As per the notice they shall present at the spot on 12.12.2024 at 11 a.m. in respect of F.D.P.No.11/2024 and also stated in the said notice that after measuring the said land they will submit report to the court in F.D.P.No.11/2024. Further the xerox copy of the R.T.C. extracts produced by the appellants reveals that already some suit schedule properties stands in the names of both parties. Further the appellants

counsel in his arguments taken specific contention that already palupatti got marked as Ex.D1 and Ex.D2. But the trial court has not taken into consideration. Hence, at present appellants have made out prima facie case to grant stay order on the operation of the judgment and decree, dated 18.12.2023 in O.S.No.110/2019 passed by the Senior Civil Judge & JMFC, Sidlaghatta. If the Survey Department as per their notice measure the lands and submit the report the purpose of filing the appeal could not survive at all. Accordingly, I answer the point No.1 partly in affirmative.

Point No.2:

10. For the reasons stated above, I pass the following:

ORDER

I.A.No.I filed by the appellants under Order 41 Rule 5 of CPC is hereby partly allowed.

Operation of the judgment and decree, dated 18.12.2023 passed in O.S.No.110/2019 by the Senior Civil Judge & JMFC, Sidlaghatta is hereby stayed till receipt of trial court records.

No order as to costs.

(Dictated to the Stenographer Grade-I, computerized by him. Script thereof is corrected and then pronounced by me in the open court on this the 19th day of December 2024).

(NAGAVENI)

II Addl. District & Sessions Judge,
Chikkaballapura, Sitting at Chintamani.