

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

Dated this the 14th day of June 2021.

Present

Sri. H.S.MANJUNATHA, B.A.L., LL.B.
II Addl. District & Sessions Judge, Chikkaballapura,
Sitting at Chintamani.

REGULAR APPEAL No.115/2013

Appellants:

1. L.Y.Bhaskar Reddy
s/o late Yarrappa Reddy,
aged about 72 years.
2. Y.L.Ramakrishna Reddy
s/o late Yarrappa Reddy,
aged about 62 years.
3. Smt.Munirathnamma
w/o late L.Y.Chandrashekar Reddy,
aged about 50 years.
4. Smt.Kanthamahalakshamma
w/o late L.Y.Subshchandra Reddy,
aged about 47 years.
5. L.Y.Sulochanamma
w/o P.V.Krishnamurthy,
d/o late Yarrappa Reddy,
aged about 63 years.

Appellants 1 to 5 are r/at
Lakshmidevikote, Ambajidurga hobli,
Chintamani taluk.

6. Smt.L.Y.Akkamma @ Aparna
w/o K.R.Prabhakar,
d/o late Yarrappa Reddy,
aged about 63 years,

r/at Nersa Layout, Higa Type-558,
Hebbal (HUDCO Layout),
Mysore – 570017.
(Represented by Sri B.R.Srinath, Advocate)

Vs.

Respondents:

1. G.Venkatareddy
s/o late Gopalareddy,
aged about 74 years.

Since dead by his Lrs.

1(a). Smt.Dyavamma
w/o G.Venkatareddy,
aged about 80 years.

1(b) Savithramma
d/o G.Venkatareddy,
aged about 60 years.

All are residing near Nagalakatte,
Malappalli,
Chintamani town.

2. L.Lakshmanareddy
s/o late Gopalareddy,
aged about 72 years.

3. Smt.Narayanamma
w/o late Dodda Appodu,
aged about 73 years.

4. M.S.Rajesh
adopted son of Dodda Appodu,
aged about 35 years.

5. Srinivasareddy
s/o late Gopalareddy,
aged about 61 years.

6. Smt.Muniyamma

w/o late Sriramareddy,
aged about 56 years.

7. Smt.M.S.Lakshmi
d/o late Sriramareddy,
aged about 34 years.

8. M.S.Nagamani
d/o late Sriramareddy,
aged about 33 years.

9. M.S.Earappareddy
s/o late Sriramareddy,
aged about 30 years.

Respondents 1 to 5 are
r/at Malapalli,
Chintamani and respondent Nos.6 to 9
are r/at Milk Society Building,
N.R.Extension,
Chintamani town.

10. Smt.Chikka Venkatamma
w/o Veerappa Reddy,
d/o Gopalareddy,
r/at Imareddyhalli village,
Kasaba hobli,
Chintamani taluk.

11. Smt.Jayalakshamma
w/o late Lakshmipathireddy,
aged about 58 years.
R/at Lakshmidevikote,
Ambajidurga hobli,
Chintamani taluk.

12. L.Y.Srinivasa Reddy
s/o late Yarrappa Reddy,
aged about 63 years,
r/at Madikere village,
Kasaba hobli,

Chintamani taluk.

(Represented by Sri S.R.Byraredddy,
Advocate for R1(a & b), Sri S.N.Sureshbabu, Advocate for R5,
Sri Manjunathareddy, Advocate for R9, Sri C.V.N., Advocate for
R10, R2 & 3 – Dead, R4, 6 to 8 - Absent)

Applicant in I.A.NO.III : Deeraj
s/o Babu Reddy,
aged about 15 years,
Minor by guardian and natural
mother Smt.Anitha,
w/o Babu Reddy,
aged about 42 years.
(Represented by Sri K.R.Mukundarao,
Advocate)

Applicants in I.A.No.IV : a) Smt.Indiramma
w/o Venkateshareddy,
aged about 48 years,
r/at Bandapalli,
Near J.Thimmasandra,
Srinivasapur taluk,
Kolar District.

b) Smt.Sharadamma
w/o Sreenivasareddy,
aged about 40 years,
N.R.Extension,
Near Old MPCS building,
Chintamani.

c) Smt.Shamalamma
w/o Ramalingareddy,
aged about 38 years,
Dalasanuru,
Srinivasapura taluk,
Kolar District.

d) Smt.Savitramma
d/o Imareddihalli
Chinnavenkatamma &
Immareddihalli Veerappareddy,
aged about 46 years,
Maniganahalli,
Srinivasapur taluk,
Kolar District.

e) Babureddy
s/o Veerappareddy,
aged about 43 years,
Imareddihalli,
Kasaba hobli,
Chintamani taluk,
Chikkaballapura District.

(Represented by Sri H.V.Ramachandrarao, Advocate)

Applicants in I.A.No.V :

a) Smt.Subbalakshamma
w/o late L.Y.Bhaskarareddy,
aged about 70 years.

b) Smt.L.B.Bharathi
w/o V.Sreenivasa,
aged about 50 years.
Ramapura,
Ammanellur post,
Kolar taluk.

c) L.B.Aruna
w/o Gopalareddy,
aged about 48 years,
Hiranyapalli,
Kasaba hobli,
Chintamani taluk.

d) B.Narasimhareddy
s/o late L.Y.Bhaskarareddy,
aged about 45 years.

e) L.B.Nagaiahreddy
s/o L.Y.Bhaskarareddy,
aged about 42 years.

Lr(a), (d) and (e) are
r/at Lakshmidevikote,
Ambajidurga hobli,
Chintamani taluk,
Chikkaballapura District.
(Represented by Sri B.R.Srinath, Advocate)

ORDER ON I.A.NO.III TO V

I.A.No.III is filed by Deeraj son of Babureddy claiming to be a legatee of Lakshmanareddy (respondent No.2?) to come on record on the basis of a Will, dated 11.12.2017 said to have been executed by Lakshmanareddy.

2. I.A.No.IV is filed by the appellant under order 22 rule 4 to bring the legal representatives of deceased respondent No.10 who died on 09.06.2020.

3. In the affidavit filed in support of I.A.No.IV appellant No.2 contends that he is aged about 70 years, there was no conveyance from his village to reach Chintamani and there was a rapid spread of corona, the application ought to have been filed on 09.09.2020, but the Hon'ble High Court of Karnataka extended the limitation in view of COVID-19, that the cause of

action to continue the appeal survives.

4. Lrs. of 1st respondent, legatees of 2nd respondent Lrs. of respondent No.10 opposed the application by contending that the application is not maintainable, no application is made to set aside the abatement and for condonation of delay, the husband name of Lr.10(c) is wrongly mentioned, address of legal representatives is stated as Imareddyhalli instead of Aimareddy village, though the appellants knew the death of Chikka Venkatamma i.e., respondent No.10 on 09.06.2020 itself to defraud these respondents the application was not filed in time.

5. I.A.No.V is filed by the Lrs. of 1st appellant to come on record. The 1st appellant died on 29.12.2020. This application was filed on 23.01.2021.

6. Heard Sri H.V.Ramachandrarao, learned counsel for respondent No.10 and applicant in I.A.No.III, Sri K.R.Mukundarao, learned counsel for appellants.

7. Following points arises for my consideration:

- 1) Whether the applicant in I.A.No.III who claims to be the legatee of respondent No.2, is to be permitted to come on record?
- 2) Whether the Lrs. of respondent No.10 are to

be permitted to come on record?

3) Whether Lrs. of 1st appellant are to be permitted to come on record?

4) What order?

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

Point No.1 : In negative.

Point No.2 : In affirmative.

Point No.3 : In affirmative.

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

REASONS

Point No.1:

9. In order to appreciate the contentions of the parties in the applications it is necessary to have a quick look of the facts that led to filing of this appeal. The appellants are plaintiffs in O.S.No.276/2007 as on the files of Senior Civil Judge & JMFC, Chintamani.

10. In brief the case of the plaintiffs is that the suit property is their ancestral and joint family property. They also claim that no time their predecessor parted with the suit property. They also make certain allegations against the defendants of creating records. So, the plaintiffs prayed to

declare that they along with defendants 11 and 12 are the owners of the property and for permanent injunction.

11. On the other hand, the defendants take up a contention of having perfected the title by way of adverse possession. They also narrate certain aspects in support of their contention. Issues have been framed, parties went into trial and ultimately the trial court dismissed the suit. Against the said judgment of dismissal the appeal is filed.

12. So far as I.A.No.III is concerned, the applicant only says that Lakshmanareddy had bequeathed the suit property in his favour by executing a registered Will in his favour on 11.12.2017 which is registered in the office of sub-registrar, Gandhinagar, Bengaluru.

13. Though in the application it is not specifically stated that it is the respondent No.2 who has executed the Will, from the name of Lakshmanareddy mentioned in the application, it is presumed that it is respondent No.2. So, it is assumed that the applicant in I.A.No.III is claiming as a legatee of respondent No.2.

14. Question is whether the applicant is to be permitted to

come on record. The application is filed under order 22 rule 10 of CPC.

15. For better appreciation the provisions of order 22 rule 10 of CPC are reproduced here below;

“Procedure in case of assignment before final order in suit.—(1) In other cases of an assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the Court, be continued by or against the person to or upon whom such interest has come or devolved.

(2) The attachment of a decree pending an appeal therefrom shall be deemed to be an interest entitling the person who procured such attachment to the benefit of sub-rule (1).”

16. Permitting an assignee during the pendency of the suit, to come on record is the discretionary power of the court. While exercising the discretion the court must also look into whether such bringing on record the legatee or the assignee would in any way help in adjudicating the matter effectively in one way or the other.

17. Case between the plaintiff and defendants in the suit is already narrated in brief. The only question to be decided is

about the title over the property. Whether the plaintiffs will succeed in establishing title or whether the defendants will be able to establish their claim of adverse possession is the exact point for consideration in this appeal.

18. But so far as the applicant is concerned, he is claiming to be a legatee under respondent No.2. If the applicant is permitted to come on record, that may open up a dispute entirely in a new direction. It is not clear as to whether the other respondents admit the claim of the applicant. According to applicant entire suit property i.e., only property that is the subject matter of the suit is bequeathed to him. So far as the claim of applicant is concerned, it is a matter inter se between the respondents. That question absolutely will have no impact on the questions to be determined in the suit.

19. Under such circumstances, the presence of the applicant in I.A.No.III instead of helping to adjudicate the matter, will be a source for another dispute unnecessarily widening the scope of the suit.

20. If the respondents succeed in substantiating their claim of adverse possession, then also the present applicant can

move against the respondents on the basis of the Will. But that will be a separate matter. So, the presence of the applicant in I.A.No.III is not at all relevant or necessary.

21. At this stage it would be helpful to reproduce the observations of Hon'ble High Court in MFA 7397/2004 in the case of Harikrishna and others V Ramesh and others, regarding Or22 Rule 10 CPC. It reads as under;

“Under Order 22 Rule 10 CPC it is the discretion of the court to grant leave to applicant to come on record and no detailed inquiry is necessary at the time of granting leave but the court must prima facie satisfied itself that their presence is just and necessary for final adjudication of the matter and to avoid multiplicity of the proceedings between the parties. The question of validity of assignment or devolution of any right can be considered at the final hearing of the.....”

22. As already observed allowing the assignee to come on record is a discretionary power of the court. For the reasons above discussed, the presence of applicant in this appeal would create further hurdles in disposing the appeal itself and the focus will be changed from the fundamental issue to an ancillary issue. So, there is no ground to exercise the discretion in favour of the applicant. Hence, I answer point under consideration

accordingly.

Point No.2:

23. So far as I.A.No.IV is concerned the main objection is that there is a delay and no application is filed to set aside the abatement and for condonation of delay and there is some mistake in the names furnished in the application.

24. So far as the aspect of delay is concerned, it is pertinent to note that the 10th respondent died on 09.06.2020 and there is no dispute about the same.

25. Further in view of the pandemic COVID-19, there were lock downs and limited work in the court. The Hon'ble Supreme Court of India extended the limitation from time to time.

26. In view of the extension of period of limitation by the Hon'ble Supreme Court of India not filing application for condonation of delay is immaterial.

27. So far as the name of husband of respondent No.10(c) is shown as Ramalingareddy, but according to appellant the correct name is Neelakantareddy. However, it is not in dispute that Smt.Shyamamma is the Lr. of respondent No.10. So, the

mistake even if any, can be corrected later also.

28. When one of the parties is dead, Lrs. will have to be brought on record if the right to prosecute survives. In this case, right to prosecute survives against the respondent No.10. Hence, bringing Lrs. of deceased respondent No.10 is proper and required. Hence, I am of the opinion that it is appropriate to allow I.A.No.IV to bring on record the Lrs. of respondent No.10. Hence, I answer the point under consideration accordingly.

Point No.3:

29. Under I.A.No.V the appellants want to bring on record the Lrs. of 1st appellant who died on 29.12.2020. The present application is filed on 23.01.2021 which is very well within limitation. The right to prosecute survives. The proposed Lrs. are the wife and children of deceased 1st appellant. Under such circumstances, the application deserves to be allowed and hence, I answer the point under consideration accordingly.

Point No.4:

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

ORDER

I.A.No.III filed by the applicant under order 22

rule 10 of CPC is hereby rejected.

I.A.No.IV & V filed under order 22 rule 4 of CPC and order 22 rule 3 of CPC respectively are hereby allowed.

Lrs. of deceased respondent No.10 and deceased appellant No.1 be brought on record.

For amendment and to hear I.A.No.VII and IX call on 28.06.2021.

Since the matter is more than seven years old all the parties are directed to co-operate with the court to expedite the matter.

(Dictated to the Judgment-writer, computerized by him. Script thereof is corrected and then pronounced by me through V.C., on this the 14th day of June 2021).

(H.S.MANJUANATHA)

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