

**IN THE COURT OF THE SENIOR CIVIL JUDGE & J.M.F.C.
AT: HOLALKERE.**

PRESENT: Smt. Prema Vasantryao Pawar
B.Com. LL.B.(Spl.)
Senior Civil Judge and JMFC,
Holalkere.

O.S. No.28/2018
Dated: 28th January 2020.

Plaintiff:

Defendants:

Smt. Kenchamma

V/s

Sri Siddaiah & Others

(By Sri. K.S.J., Adv.)

**(D.1 & D.3 by Sri. K.E.M. &
D.2 & D.4 by Sri. M.C.T.M.,
Advocates)**

PARTIES TO IA NO.II

Applicant:

Opponents:

Kenchamma

V/s

Siddaiah & Others

(Plaintiff)

(Defendants)

ORDER ON IA No.II

The plaintiff has filed an application U/O 40 Rule 1 of CPC prays that to appoint a receiver for counting the arecanut and coconut yield which are grown in the suit schedule property and to receive the proceeds derived out of the same by allowing the application in the interest of justice and equity.

2. In support of this application the plaintiff has swearing her affidavit.

3. Per contra the defendant No.1 and 2 have filed their separate objections.

4. Having heard on both the side. The following points will arise for my consideration:-

1. *Whether plaintiff has made out sufficient grounds to appoint the receiver as prayed for?*

2. *What order?*

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

Point No.1: In the Negative

Point No.2: As per final order

for the following:

REASONS

6. **Point No.1:** The plaintiff has filed the suit against the defendants for the relief of declaration, partition and separate possession over the suit schedule properties. The plaintiff has submitted that herself and defendants are the members of Hindu Undivided Joint Family governed by Hindu Mithakshara School of Law. The suit schedule

properties are the ancestral joint family properties of plaintiff and defendants. Further she has stated that defendant No.1 is the brother and being an elderly member in the family and managing the affairs of joint family and defendants are jointly enjoying the suit schedule properties. The suit schedule item No.1 to 10, 13 and 14 are the ancestral properties and out of the income derived from the said properties purchased the suit schedule item No.11 and 12 in the name of defendant No.2 during the year 1997. Though the item No.11 and 12 properties were purchased in the name of defendant No.2 but jointly enjoying the same. It is further submission of the plaintiff that recently some difference of opinion arose between defendants and by taking undue advantage of it, the defendant No.2 behind her back in order to deceive and defraud her right over the suit schedule item No.12 of the property and she is gifted suit schedule item No.12 of the property in the name of defendant No.4 through the registered gift deed. Further plaintiff has stated that the defendant No.4 who is none other than grand son of defendant No.2. Since the item No.12 of the suit schedule property is the joint family property of herself and defendants purchased out of the income derived from the joint family properties and defendant No.2 not having any independent or

exclusive right to alienate the property by way of gift deed in favour of defendant No.4 and it doesn't bind upon her right over the suit schedule item No.12 of the property.

7. Further the plaintiff has submitted that the suit schedule properties are very fertile and arecanut and coconut garden lands which are yielding morethan 300 quintals of arecanut and also huge number of coconut which are enjoying by the defendants alone without giving any proceeds derived out of the suit schedule property in her favour. Further submitted that she has apporached to the defendant No.1 in several time but defendants are taking undue advantage that the katha stands in the name of defendants neglecting and refused her. Further she has stated that arecanut and coconut yields are grown up and now it is due for cutting and at this point of time if a receiver is not appointed the defendants will deceive and defraud her without giving any proceeds derived out of the ancestral and joint family properties as such it is very just and necessary to appoint the receiver for counting the arecanut and coconut yield which are grown in the suit schedule properties and if the application is not allowed she will put great hardship and it cannot be compensated by any means and on the other

hand no harm or injustice will be caused to the defendants. Hence, prays that allow the application.

8. Per contra the defendant No.1 and 2 have objected this application contended that the application filed by the plaintiff is not maintainable and there are no grounds to appoint the receiver. Further contended that as on the date of filing of the suit the father of the plaintiff is dead as such in view of the settled principle of law the suit of the plaintiff itself is barred under law and there is no status of the joint family which has existed. The plaintiff has not assigned any strong reasons to maintain the application for appointment of receiver and only on the basis of some bald allegations it could not be legally tenable. Further contended that the suit schedule properties are not the ancestral and joint family properties and not in joint possession and it is false that suit schedule properties are very fertile arecanut and coconut garden lands which are yielding more than 300 quintals of arecanut and huge amount of coconut. Further contended that the plaintiff has not made out any reasonable grounds to succeed in the suit and there are no reasonable grounds to appoint the receiver as such the application is not maintainable. Hence, prays that to dismiss the application with exemplary cost.

9. In view of the application, objection and also observing the arguments advanced by the either side it reveals that according to Order 40 Rule 1 of CPC provides for appointment of receiver which reads as under:

“1. Appointment of receivers.--(1) Where it appears to the Court to be just and convenient, the Court may by order--

- (a) appoint a receiver of any property, whether before or after decree;
- (b) remove any person from the possession or custody of the property;
- (c) commit the same to the possession, custody or management of the receiver; and
- (d) confer upon the receiver all such powers, as to bringing and defending suit and for the realization, management, protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of documents as the owner himself has, or such of those powers as the Court thinks fit.

(2) Nothing in this rule shall authorize the Court to remove from the possession or custody of

property, any person whom any party to the suit has not a present right so to remove.

10. In view of the above provision it appears that the court to be just and convenient to appoint the receiver of any property whether before or after the decree and party must prima-facie shows that the property will be wasted or destroyed unless a receiver is appointed. The plaintiff has seeking the prayer in the application that to appoint a receiver for counting the arecanut and coconut yield which are grown in the suit schedule properties and to receive the proceeds derived out of the same. It is pertinent to note that only the general averments in the affidavit are not enough, the affidavit must set out the ground upon which such belief is founded. There should be a reasonable probability that the plaintiff asking for receiver which ultimately get it. The matter of appointment of receiver is discretionary and a receiver is to appointed to manage the suit property if party must shown necessity of appointment of receiver. The earned counsel for plaintiff during the course of arguments submitted that there is a fertile arecanut and coconut garden land and yielding 300 quintal arecanut and huge number of coconut as such appointment of receiver is just and necessary to count it and receive the proceeds from the said

garden land. Per contra the learned counsel for defendants vehemently argued that the object of the appointment of receiver for preservation of property pending litigation by a court which has to decide the right of the litigant parties and court must necessarily exercise a discretion whether it will or will not interfere such an interim order to protect the property. Further argued that the suit schedule properties are not the joint family properties and plaintiff along with defendants not enjoying the suit schedule property as such question of appointment of receiver doesn't arose. In this regard the learned counsel for defendants relying the decision reported in **2008 (1) Kar. L.J. 703 (N. Kodandaramareddy Vs. Graphite India Karmikara Sangha)** and submitted that in the above said decision referred the decision of T.Krishnaswamy Chetti Vs. Sri. Tangavelu Chetti and Others, wherein few principles have been laid down, i.e., "Pancha Sadaachar" which ought to have been born in mind by the court while exercising equity jurisdiction in appointing a receiver and the principles being,

- i) That the question of appointing a receiver is a matter resting in the discretion in the court.*

ii) That a receiver should not be appointed unless the party has an excellent chance of succeeding the suit.

iii) That the plaintiff himself shall show that there was some emergency or danger or loss, that may be caused to the right involved in the suit.

iv) That an order appointing a receiver shall not be made, if it has the effect of depriving a defendant of de-facto possession; that, however, the position would be different if the property shown be 'In medio' that is to say, in the enjoyment of no one.

v) That the court should always look into the conduct of the parties who seek for the appointment of a receiver.

11. The learned counsel for defendant relying the above principles stated that these principles are not made out by the plaintiff and question of appointment of receiver doesn't arose.

12. In view of the above principles and also observing the arguments of either side it reveals that the plaintiff has not produced any probable document for yield of the arecanut and coconut as stated in the affidavit. The receiver

could be appointed only if, there occurs a prima-facie case in favour of plaintiff, requiring such an appointment as an urgent measure and in a case where the defendant was in possession the appointment of receiver would not be justified, unless prima-facie case was made out by the plaintiff that such an urgent measure as appointment of a receiver was warranted. The appointment of receiver only to preserve the property and granting of such order is to be exercise of discretionary power and that the terms just and convenient. The court must necessarily exercise a discretion whether it will or will not interfere by such an interim order to protect the property. It would be in the interest of all concerned but if the object of the plaintiff is to assert a right to property of which the defendant has to enjoying disputed question arising between the parties are involved. But in the instant case in hand it requires full pledged trial in order to find out whether the suit schedule properties are ancestral joint family property or not as such at this juncture appointment of court commissioner is not just and proper and there is no reasonable grounds assigned by the plaintiff. Hence, for the above reason point No.1 is answered in the Negative.

13. **Point No.2:** In view of the above reasons, I proceed to pass the following:

ORDER

The IA No.II filed by the plaintiff U/o 40 Rule 1 of CPC is hereby dismissed.

For the facts and circumstances of the case no cost is awarded.

(Dictated to the Stenographer directly on the computer, corrected by me and then pronounced in Open Court on 07th day of February 2020).

(Smt. Prema Vasantrao Pawar)
Senior Civil Judge and JMFC.,
Holalkere.