

**IN THE COURT OF THE ADDITIONAL CIVIL JUDGE AND
J.M.F.C., AT KOLLEGALA**

:PRESENT:

SRI.SANTHOSHA KOTARI, B.A.L.LB.,
Addl.Civil Judge and JMFC.,
Kollegala.

Dated this the 24th day of June 2020

ORIGINAL SUIT NO.155/2014

PLAINTIFFS	1	Sri N. Chinnaswaminayaka, S/o Late Nagarajanayaka, Aged about 48 years,
	2	Sri K.N. Nataraju,(Dead) Represented his LRs,
	2a	Sri K.N. Ullas, S/o Late N. Nataraju, Aged about 19 years,
	2b	Sri K.N. Udayakumar, S/o Late N.Nataraju, Aged about 19 years,
	2c	Master K.N. Mohan, S/o Late N. Nataraju, Aged about 16 years, 2c is minor, 1 st plaintiff is the guardian
	3	Sri N. Rajendra, S/o Late Nagarajanayaka, Aged about 42 years, All are R/at Nayakara Beedi, Kunagalli Village, Kasaba Hobli, Kollegal Taluk, Chamarajanagara District.
		(By Sri D.R.Siddaraju, Advocate)
		V/S
DEFENDANTS	1	Sri Kamanayaka @ Kamaiah, S/o Late Kenchanayaka, Aged about 70 years,

	2	Smt. Parvathamma W/o Kamanayaka, Aged about 42 years,
	3	Smt. Umakumari W/o Shivaprasad D/o Kamanayaka, Aged about 35 years, R/at Nayakara Beedi, Palya Village, Kollegal Taluk, Chamarajanagar District.
	4	Sri Ramesh.K S/o Kamanayaka, Aged about 32 years,
	5	Sri Kamalesh. K. S/o Kamanayaka, Aged about 31 years,
	6	Sri Mahesh.K S/o Kamanayaka, Aged about 29 years,
	7	Sri Umesh.K. S/o Kamanayaka, Aged about 27 years,
	8	Smt. Dhanalakshamma, W/o Late Siddanayaka, Aged about 60 years,
	9	Sri S. Nagendra, S/o Late Siddanayaka, Aged about 34 years,
	10	Sri S.Prakash, S/o Late Siddanayaka, Aged about 31 Years, D1, 2, 4 to 10 R/at Kunagalli Village, Kasaba Hobli, Kollegal Taluk, Chamarajanagara District.
	11	Sri V. Sriramachandra Vara Prasadraj, S/o Venkatasubbaraju,

		R/at Arepalya(Near Chikkanakere), Kempanapalya Post, Kollegal Taluk, Chamarajanagara District.
	12	The Manager, Canara Bank, Kollegal Branch, Dr. Rajkumar Road, Kollegal Town, Chamarajanagara District.
	13	The Supervisor, Reliance Mobile Tower, Kunagalli Village, Kollegal Town, Chamarajanagara District.
		(D1 to 7 By Sri.M. Ravi Kumar, Advocate) (D8 to D10 By Smt. N.R. Nirmala, Advocate) (D12 By Sri.N.Radha Krishna, Advocat (D11 & D13 Exparte)

**ORDER ON IA. XIII FILED BY THE DEFENDANT NO.7 UNDER
SECTION 151 OF THE CODE OF CIVIL PROCEDURE.**

This is an application filed by the counsel for the defendant no.7 seeking permission to rent out the suit 'A' schedule property till disposal of the suit.

2. In the affidavit in support of the application, the defendant no.7 has sworn to an affidavit and stated that the plaintiffs have filed the above suit against them for the relief of partition and separate possession in respect of the suit schedule properties. In view of the defense set up by them the subject matter of suit is not available for partition. The plaintiffs after filing the above suit have also obtained a Temporary Injunction against the defendants from alienating the suit schedule properties till disposal of the suit. He

further stated they are filing this application seeking permission to rent out the suit 'A' schedule property and except rent out the suit 'A' schedule property they are not entering any type of contract with anybody as such same is not out side the purview of the order passed on IA.VII. He further stated that since the suit is one for partition and separate possession if the plaintiffs are successful in their case they are entitled for mesne profit as such no hardship or injury would be caused to the plaintiffs on allowing the application. He further stated that the suit 'A' schedule property is located in the prime place of Kollegal and if the said property is left as it is it will be ruined as the same is old construction. For all these reasons he prayed to allow the application.

3. On the other hand the plaintiff no.1 has filed an objection to the said application opposing the same and denied the averments made in the affidavit accompanying the application. He stated that though the defendants have taken a defense that there was already partition and all the respective parties are residing separately obtaining their respective shares they have not produced any document to substantiate their defense. He further stated that if this court comes to the conclusion to allow the application permitting the defendants to rent out the suit 'A' schedule property direct the defendants or proposed tenants to deposit the rent in the

court. If the said rent amount is not deposited in the court the defendants would use the same for their personal use and if the plaintiffs would succeed in the case they would get nothing towards mesne profit. For all these reason he prayed to dismiss the application.

4. Heard the counsel for the plaintiffs and defendants. Perused the materials on record. The following points arise for my consideration;

1. Whether the defendant no.7 has made out sufficient grounds to allow the application filed under section 151 of the Code of Civil Procedure ?
2. What order?

5. I answer the above point no.1 in the “Affirmative” for the following;

REASONS

6. Point No.1:- The plaintiffs have filed the above suit for the partition and separate possession of their legitimate share in the suit schedule properties. After service of summons the defendants no. 1 to 10 and 12 appeared through their counsel and filed their detailed written statement denying the plaint averments. Thereafter, the plaintiffs have filed an IA VII under Order XXXIX rule 1 and 2 of the Code of Civil Procedure seeking temporary injunction restraining the

defendants from alienating the suit schedule properties pending disposal of the suit. This court after hearing both the parties as per the order dated 27.06.2017 has allowed said IA and passed an temporary injunction restraining the defendants from alienating the suit schedule properties pending disposal of the suit. Now the defendant no. 7 has filed this application seeking permission of this court to rent out the suit 'A' schedule property.

7. It is pertinent to note that admittedly the above suit is one for partition and separate possession and along with the main relief of partition and separate possession they have also sought for enquiry in to the mesne profit. In the present application the defendant no.7 has sought permission of this court only for rent out the suit 'A' property to the proposed tenant and not for any other purpose. If the plaintiffs are succeeded in the suit they can seek for their share in the rent amount while holding enquiry in to the mesne profit as such same would be benefited for both the parties. If the said application is allowed with a direction to the defendant no.7 to produce the copy of the rent agreement and file the same in the court after entering the said agreement with the proposed tenants no hardship or injury will be caused to the plaintiffs rather definitely it would be benefited for both the parties. If the said application is not allowed the property shall be kept

as it is and nobody will get any income from said property and it will not be benefited to either of the parties. Therefore, the defendant no.7 at this stage has made out sufficient grounds to allow the application . Hence, I answer point no.1 in the **‘Affirmative’**.

8. Point no.2:- In the result, I proceed to pass the following;

ORDER

I.A.XIII filed by the defendant no.7 under Section 151 of the Code of Civil Procedure is hereby allowed. The defendant no.7 is permitted to rent of the suit ‘A’ schedule property to the proposed tenants. However, it is made clear that the defendant no.7 is directed to produce the copy of the rent agreement and file the same in the court after entering the said agreement with the proposed tenants.

No order as to costs.

(Dictated to the Stenographer, transcribed by her on Computer, same is corrected and then pronounced by me in the open court on this the 24th Day of June 2020).

Addl. Civil Judge & JMFC,
Kollegal

(Vide Separate Order pronounced in open Court)

ORDER

I.A.XIII filed by the defendant no.7 under Section 151 of the Code of Civil Procedure is hereby allowed. The defendant no.7 is permitted to rent of the suit 'A' schedule property to the proposed tenants. However, it is made clear that the defendant no.7 is directed to produce the copy of the rent agreement and file the same in the court after entering the said agreement with the proposed tenants.

No order as to costs.

(Dictated to the Stenographer, transcribed by her on Computer, same is corrected and then pronounced by me in the open court on this the 24th Day of June 2020).

Addl. Civil Judge & JMFC,
Kollegal

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