

**IN THE COURT OF THE ADDL. CIVIL JUDGE, AND JUDICIAL
MAGISTRATE FIRST CLASS AT HONNALI.**

PRESENT : Smt. Archana K. Unnithan, B.E., L.L.B.

C/C Addl. Civil Judge and JMFC., Honnali

FDP 10/2012

Dated this day of 4th September 2021

PLAINTIFF		DEFENDANT
Gutti Kannamma W/o Gutteppa D/o Late Haladappa and Siddamma dead by LRS. 1. Gowramma W/o Benakappa, aged about 55 yars, R/o: Benakanahalli village, Honnali taluk and 2 others. (Rep. By Sri. BGS.,Advocate)	V/S	Basappa dead by LRS a) Rudrappa S/o Basappa, aged about 54 yars, R/o: Marikoppa village, Honnali taluk and others. (R1(a to f) , R2 (a to e) Rep. By Sri. HMS advocate, R3, 6 absent, R4 and 5 Sri. GMH advocate)

Parties to I.A. No.11

Applicant		Opponent
2. Parameshwarappa S/o Gutteppa , aged about 58 years, agriculturist, R/o: H. Gopagondanahalli village, Honnali taluk.	V/S	4. Kadkappa S/o Halappa, major, R/o: Marikoppa village, Honnali taluk.

Orders on I.A. No. 11

Learned counsel for petitioner has filed this IA. no.11 U/o 39

Rule 1 and 2 r/w sec. 151 of CPC praying to restrain respondent no. 4 from constructing any structure over the suit schedule property. Along with the IA the petitioner filed affidavit stating that, the Hon'ble High Court of Karnataka in RSA no. 793/1975 and 794/1975 held that, while effecting partition by meets and bounds as far as possible the area purchased by defendant no.3 and husband of defendant no.4 to be allotted the share of defendant no.1 Halappa S/o Ramanna, it is submitted that, if the share is calculated defendant no.1 has no share left over to be allotted. When such is the case respondent no.4 being aware pendency of petition are attempting to build structure in the petition schedule property without demarkation of the land. Hence, filed the application to restrain respondent no.4 from putting up construction.

2. Learned counsel for respondent no.4 and 5 has filed objection mainly on the ground that, petition schedule property are not joint family properties of petitioner and respondents. The said property is self acquired property of grand father of respondent no.4 and 5 Ramanna. Hence, the question of restraining the construction does not arise. It is contended that, grand father of respondent no.4 and 5 by name Kannappa had 3 sons who partition the property orally during their lifetime. It is contended that, they have no notice of the Hon'ble High Court of Karnataka in RSA no. 793/1975 and 794/1975 and that they are not parties to the suit. Hence, prays to reject the IA.

3. Heard the plaintiff side and perused the document produced.

4. The following points arises for the consideration of this court

1. Whether the petitioner has made out prima facie case?

2. *Whether the balance of convenience lies in favour of petitioner?*
3. *Whether petitioner put irreparable loss and injury ?*
4. *What order?*

5. My findings to the above points are as follows:

Point no.1 : In the affirmative

Point no.2 : In the affirmative

Point no.3 : In the affirmative

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

REASONS

6.Point no.1 to 3 : Since, the facts are inter connected. In order to avoid repetition of facts point no.1 to 3 are taken up together for consideration.

7. It is the case of the petitioners that , as per the order of Hon'ble High Court of Karnataka in RSA no. 793/1975 and 794/1975 the share of the parties are determined. On perusal of the petition and the order passed by Hon'ble High Court of Karnataka it is observed that, the property in Sy.No. 20 was in dispute. The Hon'ble High Court of Karnataka has held that, Siddamma had 1/6 share and Guddi Kannamma had 5/12 share in the property. The petitioner herein have filed FDP petition as per the decree passed in OS no. 119/72 . Respondents contended that, suit schedule property is their absolute property and not liable for partition.

8. Petitioners herein are the children of Siddamma and respondent no.4 to 6 herein are children of defendant no.1 i.e., Halappa in original suit .

9. Learned counsel for respondent vehemently argued that, the petitioners have not impleaded the purchasers of the property as per the orders of Hon'ble High Court of Karnataka . Further, contends that, the petition schedule property and decree schedule property are different. On perusal of the schedule in RA no. 29, 30, 31 /1973 it is observed that, the suit schedule property is in dispute was in Sy.No. 20 bearing 12 acre 27 guntas . It is argued by learned counsel for respondents that, there is a difference in the extent of the property mentioned in the decree and in the petition . However, on perusal it is observed that, the respondent no.4 and 5 not only challenges the decree but also claims that, they are the exclusive owners of the property. When Hon'ble High Court of Karnataka has already decided the suit and held that, *"Siddamma is entitled for 1/6 share and Gutti Kannamma is 5/12 share and further it was held that, property purchased by defendant no.3 and defendant no.4 to be allotted to the share of defendant no.1 i.e., Halappa."* . Hence, this court is of the opinion that, LRS of Halappa at this stage cannot take a defence of exclusive ownership. Accordingly, at this stage this court arrives at the finding that, the petitioner has made out a prima facie case in their favour and balance of convenience and irreparable loss and injury also lies in their favour as the properties have not been carved out separately. For any of the parties to put up construction it is just and necessary to carve out their share and ascertain their piece of land. When the same not being done and the continuation of the FDP itself gives support to the apprehension of the petitioner that, if the construction is carried out it will definitely effect their share in the property. Further, whether the respondents no.4 and 5 are the absolute owners of the property cannot be decided at this stage.

Whether the judgment of Hon'ble High Court of Karnataka is not binding on them also needs to be ascertained by a full fledged trial. As such, this court proceeds to allow the application. Hence, this court proceeds to answer the **point no.1 to 3 in the affirmative.**

10. **Point no.4:** Hence, this court proceeds to pass the following :

//ORDER//

The IA no.11 filed by the petitioner is hereby allowed.

The respondent no.4 or any other person claiming through him are hereby restrained from constructing any structure over the suit schedule property till disposal of the petition.

No order as to cost.

(Smt. Archana K. Unnithan)

Addl.C.J. And JMFC, Honnali.