

**IN THE COURT OF THE PRL. SENIOR CIVIL JUDGE  
AND CJM, DHARWAD**

**PRESENT**

**SHRI. S.V. SRIKANTH,**  
**Prl. SENIOR CIVIL JUDGE AND CJM.,**  
**DHARWAD**

**O.S. No.111/2018**

**DATED THIS 21ST DAY OF OCTOBER 2020**

**PLAINTIFF/S :** Smt. Gouravva @ Gouramma W/o  
Basayya Tigadimath,  
Age: 62 years, Occ: Housewife,  
R/o Near Ganapathi Temple,  
Kelageri, Dharwad.  
( By Sri. N.B. Kumbar, Adv.)

Vs.

**DEFENDANT/S :** 1. Kallayya S/o Basayya Kannikoppa @  
Hiremath,  
Age: 59 years, Occ: Nil,  
2. Nagayya S/o Basayya Kannikoppa @  
Hiremath,  
Age: 52 years, Occ: Nil,  
3. Kumari Radha D/o Siddalingayya  
Kannikoppa @ Hiremath,  
Age: 26 years, Occ: Household work,  
4. Smt. Basavva calling herself as W/o  
Siddalingayya Kannikoppa @  
Hiremath,  
Age: 39 years, Occ: Household work,  
5. Kumar Vinayak calling himself as S/o  
Siddalingayya Kannikoppa @  
Hiremath,

Age: 23 years, Occ: Student,

6. Smt. Shridevi W/o Manjayya  
Kannikoppa @ Hiremath,  
Age: 52 years, Occ: Household work,
7. Sunil S/o Manjayya Kannikoppa @  
Hiremath,  
Age: 27 years, Occ: Agriculture,
8. Sandeep S/o Manjayya Kannikoppa @  
Hiremath,  
Age: 25 years, Occ: Student,  
All are R/o Kelageri,  
Tq : Dist: Dharwad.

( By Sri. C.I. Hiremath, Adv.)

**ORDERS ON PRELIMINARY ISSUE / ISSUE NO.4**

The Plaintiff has filed the present suit against the eight Defendants for the manifold reliefs of partition and separate possession, ordering for an enquiry to ascertain mesne profit with other connected reliefs including costs of the proceedings.

2. According to the Plaintiff the propositus of the family was one Basayya S/o Kallayya Kannikoppa and he was married to Smt. Shantavva, out of their wedlock Plaintiff, Kallayya, Kallavva, Siddalingavva, Nagayya and

Manjayya were born. It is also the say of the Plaintiff that this propositus Basayya died on 08-12-1995 and his wife Shantavva also is dead and out of six children Basayya and Kallavva died leaving behind their respective children.

3. In the plaint there is a reference to the fact that during the life time of propositus Basayya Kannikoppa he was cultivating the schedule A property as a tenant and had also filed Form No. 7 for grant of occupancy right in his favour to the Land Tribunal, Dharwad. After holding an enquiry the Land Tribunal, Dharwad was pleased to grant occupancy right in his favour dated 27-01-1982. As Basayya died on 08-12-1995 which was an intestate then Plaintiff, Defendants No.1 to 4, 7 and 8 being the L.Rs of Basayya succeeded to the schedule A property and they are in joint possession of the same. Coming to the schedule B property it is the ancestral property of the Plaintiff, Defendants No.1 to 4, 7 and 8 and no partition has taken place in it. As Defendants No.1 to 4, 7 and 8 are

not presently doing any agricultural operations and unnecessarily wasting the suit schedule A property by creating third party interest detrimental to the interest of the Plaintiff. When the the Plaintiff demanded to effect partition in the schedule properties they have postponed the same and ultimately denied the same.

4. According to the Plaintiff earlier she had filed a suit in O.S No. 439/2014 before this Court for partition and separate possession and that suit came to be dismissed on 02-06-2017. For restoration, this Plaintiff had also preferred a Civil Misc. No. 21/2017 and that also came to be dismissed for non-prosecution. As the Plaintiff is an uneducated old lady she has no worldly knowledge of the legal proceedings and if the present suit is registered and taken on record it will not cause hardship to anybody and prayed for the plaint reliefs.

5. On the other hand, the Defendant No.1 filed written statement which came to be adopted by the

Defendants No.2, 4 to 8 as mutatis and mutandis. According to these Defendants at the outset the present suit is frivolous, false and based on concocted facts so not maintainable. According to these Defendants, the description of the schedule properties are incorrect including their measurements. The genealogy shown in the plaint is not correct and relationship between the parties to the suit are not correctly explained. There is also attack on these facts that the Plaintiff has not paid proper Court fee on the plaint and the suit valuation is hopelessly bad. There is also attack to the fact that suit is not maintainable.

6. According to these Defendants, para No.4 of the plaint has been partly admitted to be correct and Basayya was the propositus who had 4 sons and two daughters, out of two daughters Kallavva passed away and the Plaintiff is another daughter of the propositus. According to these Defendants, the Defendants No.1 and 2 are the sons and

Siddalingayya and Manjayya are also the sons of propositus they are passed away long back. This Basayya passed away on 08-12-1995 and his wife is also no more. According to these Defendants, the Plaintiff has purposely not shown the correct relationship and the Defendant No.3 is residing with the Plaintiff in her house at Kelageri. The second wife of late Siddalingayya is not made as a party to this suit. Hence, the present suit is bad for non-joinder of necessary parties.

7. So far as para No. 5 of the plaint is partly admitted to be correct that the schedule A property is a tenanted land and that was granted to the propositus in his name alone. So the Plaintiff has no share in the schedule A property. The schedule A property is self acquired property of Basayya and so far as other allegations in respect of the B schedule property has been denied as false and baseless. It is also the say of these Defendants that the Defendant No.3 has no right or interest over the schedule property as

she has given up her rights in the share of her father i.e., late Siddalingayya in O.S No. 515/2011 which was filed by the Defendant No.3 against her step mother Smt. Basavva who is the second wife of late Siddalingayya. The present suit is nothing but a suit filed in collusion with the Plaintiff by the Defendant No.3 so same is not maintainable. Likewise, so far as the schedule B property is concerned it is the say of these Defendants that it is the self acquired property of Basayya who purchased the same in the year 1939 by rendering coolie work. Likewise, according to these Defendants, they have denied the fact that they are not doing agricultural operations in the schedule A property. On the other hand, so far as O.S No. 439/2014 was dismissed by this Court, so also Civil Misc. No. 21/2017. In both these proceedings the present Plaintiff remained absent as she knew very well that she has not approached the Court with clean hands. It is also the say of these Defendants that as the Plaintiff has not challenged the M.E No. 5395 dated 27-03-1999 on the basis of which

the names of the sons of late Basayya were mutated in record of rights in respect of the schedule properties, on this count also suit is not maintainable as the present suit has been filed in collusion with the Defendant No.3 for wrongful gain and prayed this Court to dismiss the suit with exemplary costs.

8. In the present suit as this Court has framed issues and the Plaintiff has been examined as P.W.1 and exhibits at Ex.P1 to P8 came to be marked. At that juncture, counsel for the Defendants named above submitted that as issues No.3 and 4 are treated as Preliminary issues, out of which issue No.4 becomes an important and urgent one to be considered. Once if this Court comes to the conclusion that the present suit is maintainable and can be tried in accordance with law then only question of giving finding on other issues and permitting the Plaintiff to lead further evidence will arise.

9. As both Plaintiff and Defendants agreed to address their arguments on issue No.4 which is treated as a Preliminary issue, this Court heard the same.

10. The following issue No.4 which is treated as a Preliminary issue that reads as under;

**Whether the Plaintiff proves that in spite of O.S No. 439/2014 and Civil Misc. No. 21/2017 the present suit is maintainable?**

11. After carefully going through the materials available on record and also considering the admission given by the Plaintiff, my findings to the above issue is in the **Negative as not maintainable** for the following:

### **REASONS**

12. **ISSUE NO.4** :- When the Plaintiff addressed his arguments, the leaned counsel appearing for that lady had very little to oppose the stand taken by the Defendants in

this regard. It is admitted by the Plaintiff herself that earlier she has filed a similar suit for partition and separate possession in respect of the very same properties before this Court in O.S No. 439/2014. As the Plaintiff did not pursue that suit diligently that suit came to be dismissed for non-prosecution. Subsequently, as a remedial measure the Plaintiff has maintained a Civil Misc. No. 21/2017 seeking for restoration of dismissed suit earlier. Even that petition came to be dismissed for non-prosecution. These aspects have been made clear by P.W.1 in her examination-in-chief at para No.6 also.

13. Now the only question is; when this Court has dismissed the Civil Misc. No. 21/2017 but she has not chosen to question the legality of the order passed by this Court in that Misc. petition. During the course of the argument, the learned counsel for the Plaintiff has squarely admitted that it is a grave lapse on the part of the Plaintiff and that earlier litigations were handled by some

other advocates and he does not know why that was not persuaded further. Equally, the learned counsel for the Plaintiff submitted that if present suit is permitted to be taken on record and if the Plaintiff is permitted to go on with the matter no greater hardship would be caused to the Defendants. To this submission the learned counsel for the Defendants submitted that when there is a clear embargo in law that the Plaintiff cannot by-pass the same and that she is no exception to the rule. The Defendants counsel has also highlighted the fact that the present suit has been filed as the Plaintiff was set up by the Defendant No.3 only on account of the fact that the schedule properties prices have shot-up. Moreover, according to the Defendants relentlessly from 2004 onwards this Plaintiff is busy in filing the suit after the suit and she does not take them its logical end. Now, as rightly pointed out by the Defendants counsel so long as order passed by this Court in Civil Misc. No. 21/2017 is not questioned by anybody muchless the Plaintiff, the present suit is not

maintainable. Moreover, the cause of action furnished by the Plaintiff in this suit did not speak in respect of either O.S No. 439/2014 or Civil Misc. No.21/2017 both getting dismissed for non prosecution. If the Plaintiff is permitted to go on with this suit then it not only amounts to by-passing the law and rules but unnecessarily encouraging the Plaintiff to approach the Court as and when she is interested and to file the same suit which was presented about 6 years back. According to me if the Plaintiff is permitted to go on with the matter it not only consumes the precious time of the Court but it will set a bad example and encourage the Plaintiff who is a wrong doer in filing the present suit knowing that she could not have maintained the present suit when her Civil Misc. No. 21/2017 has already been dismissed. Under such circumstances, I have answered **the Issue No.4 in the negative as not maintainable** and proceed to pass the following:

**ORDER**

**The suit of the Plaintiff is hereby  
dismissed as not maintainable with  
costs.**

**I call upon the office to draw the  
decree accordingly.**

*(Dictated to the Stenographer, transcribed and computerized by him,  
script corrected and then pronounced by me in the Open Court on this  
the 21<sup>st</sup> day of October 2020)*

**(S.V. SRIKANTH),  
Prl. Senior Civil Judge & CJM.,  
Dharwad.**