

**IN THE COURT OF THE II ADDL, SENIOR CIVIL
JUDGE & JMFC., HUBBALLI.**

Present: **Smt. Padmashree Ratnakar Patil.,**

B.A. LLB. (Spl.)

II Addl. Senior Civil Judge & JMFC.,
Hubballi

O.S. No. 220/2020

Dated this the 5th day of February, 2024

PLAINTIFF/S : Smt. Shanta W/o Vishwanath
Angadi
Age: 50 yrs, Occ: Household,
R/o: H.No.11,
Basaveshwara Nagar,
Gokul road, Hubballi and another

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

// Versus //

DEFENDANT/S : Sri. Mahadevappa S/o Basappa
Kiresur,
Age: 75 yrs, Occ: Agriculture,
R/o: Plot No.23, Shivanand Nagar,
Navanagar, Hubballi and others

(By Sri. R.G.Kodli, Adv.)

PARTIES TO I.A NO.6

APPLICANT/ : Sri. Mahadevappa S/o Basappa
(Ori. Defendant) Kiresur and another

V/S

OPPONENTS/ : 1. Smt. Shanta V. Angadi
(Ori. Applicant) 2. Smt. Sumitra B. Angadi
Hubballi

ORDER ON I.A. NO.6 FILED UNDER SEC.151 OF CPC

The defendant No.1 to 3 and 5 filed this application under Sec.151 of CPC to permit them to sell the properties mentioned in the affidavit.

2. The defendant No.1 in his affidavit and submits that, he raised the loans for the family legal necessity and also crop loan on the agricultural land for the development of the lands and family purpose. They have also raised the loans from the bank for developing properties on the house properties situation at Navanagar Hubli. Thereafter defendants submits that, totally they have taken 2,62,24,889/-. The bank also filed cheque bounce case against the defendant No.3. The rate of interest on the said loan will increase day by day. Therefore, prayed to allow the application.

3. On the other hand, plaintiff filed objection to the application and contended that, plaintiffs have filed I.A.No.V under Order 39 rule 1 and 2 of CPC. They have filed this suit for the relief of partition and separate possession by meets and bounds in all the suit schedule properties. The defendants have sold the several plots. The amount which have been claimed to be borrowed by the defendants in subject matter of adjudication. So as to ascertain whether the borrowing for the benefit of entire family or of a individual purpose. Therefore, prayed to dismiss the application.

4. Heard both side.

5. The plaintiff filed this suit for the relief of partition and separate possession of suit schedule properties. The defendants admitted the genealogy and suit schedule properties. The plaintiffs seeking partition in all the suit schedule properties. Counsel for defendants at the time of argument submits that, if the plaintiffs are succeeded in their case the other properties are there to adjust the shares of plaintiffs. But before trail the said aspect cannot be considered since all the properties are equally important for the

plaintiffs to get their shares in the suit properties if they succeeded in the suit. At this juncture, this court cannot hold a mini trial as stated in the I.A.No.5 and allow the defendants to sell the property to repay the loan. Further defendant No.1 submits that, he took the loan for family necessity. As rightly argued by the counsel for plaintiff that, the said aspect is matter of adjudication whether the loan is taken for family necessity or personal purpose. Therefore, this court proceed to pass the following:

ORDER

The application No.6 filed by the
defendant No.1 to 3 and 5 on 15-08-
2022 under Sec.151 of CPC is
hereby dismissed.

(Dictated to the stenographer directly on computer typed by her, the same is corrected and then pronounced by me in the open court on this the 05th day of February 2024.)

(Smt. P.R.Patil)

II Addl. Senior Civil Judge and
JMFC, Hubballi

sankolli jawalekar adv

(Order pronounced in the open court vide separate Order)

:ORDER:

The application No.2 filed U/o 39 Rule 1 and 2 of CPC by plaintiff is hereby allowed.

The defendants are hereby restrained from alienating the suit schedule properties in any manner as prayed in the application till disposal of the suit.

For Issues, call on 06-01-2024.

(Smt. P.R.Patil)

II Addl. Senior Civil Judge and
JMFC, Hubballi