

**IN THE COURT OF THE PRL. SENIOR CIVIL JUDGE, & CJM
GADAG.**

Present: Smt. Preeti Sadguru Sadarjoshi
B.A., LL.B.
Prl. Senior Civil Judge & CJM., Gadag.

Dated this the 10th day of April, 2024.

O.S No.113/2022

PLAINTIFFS:-

1. Gurayya S/o Shankrayya Nagalotimath
(Since deceased by his L.Rs.)
- 1.a) Veerayya S/o Shankrayya Nagalotamath,
Age:38 years, Occ:Employee (Army)
R/o Shirol, Tq:Naragund, Dist:Gadag.
- 1.b) Basavaraj S/o Shankrayya Nagalotimath,
Age:37 years, Occ:Private Employee,
R/o Shirol, Tq:Naragund, Dist:Gadag.
2. Shankrayya S/o Gurayya Nagalotimath,
Age:65 years, Occ:Agriculturist,
R/o Shirol, Tq:Naragund, Dist:Gadag.
3. Ayyavva W/o Vijay Kulakarni,
Age:62 years, Occ:Household,
R/o Chikkanaragund, Tq:Naragund,
Dist:Gadag.

(By Sri S.F.Doddamani, Advocate)

- Vs -

DEFENDANTS:

1. Sharanayya S/o Mallayya Nagalotimath,
Age:35 years, Occ:Agriculture,
R/o Shirol, Tq:Naragund, Dist:Gadag.
2. Mahanthayya S/o Siddayya Pujera,
Age:50 years, Occ:Agriculture,
R/o Shirol, Tq:Naragund, Dist:Gadag.
3. Deepa W/o Sharanayya Nagalotimath,
Age:29 years, Occ:Agriculture,
R/o Shirol, Tq:Naragund, Dist:Gadag.
4. Vijaya W/o Vijay Kulakarni,
Age:67 years, Occ:Agriculturist,
R/o Chikkanaragund, Tq:Naragund,
Dist:Gadag.

(D1 by Sri B.S.N./N.C.P. Advocate)
(D-2, 4 – Exparte)
(D03 by Sri R.V.BH, Advocatge)

Parties To I.A. No.6**APPLICANT:-**
(Deft.No.3)

Deepa W/o Sharanayya Nagalotimath

- Vs. -

OPPONENTS:

Gurayya S/o Shankrayya Nagalotimath Since
deceased by his L.Rs. and others.

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ORDERS ON I.A.No.6.

1. The learned counsel for the defendant No.3 has filed I.A.No.6 U/O 39 R.1 and 2 of CPC to restrain the plaintiff No.1(a), (b) and other plaintiffs from causing obstruction to the possession and enjoyment of the defendant No.3 over the suit property No.3 bearing R.S.No.175/2 measuring 5 acres 32 guntas situated at Shirol village till disposal of suit.

2. The said application is accompanied by the affidavit of the defendant No.3 stating that the plaintiffs have filed suit for partition and separate possession. The defendant No.3 has purchased the suit property bearing R.S.No.175/2 measuring 5 acres 32 guntas from the defendant No.4 under a registered sale deed dated 10/03/2022 before the Sub-Registrar, Naragund and since from the date of purchase, the defendant No.3 has become the owner in possession and enjoyment of the same. Such being state of

affairs, the plaintiffs are unnecessarily causing obstruction to the possession and enjoyment of the defendant No.3 over the above said property without any cause. Even, the plaintiffs are interfering in the suit property and giving threat to the defendant No.3. The act of the plaintiffs are causing hardship to the defendant No.3. The defendant No.3 has made out a prima-facie case. Balance of convenience lies in favour of the defendant No.3. If I.A.No.6 is not allowed, the defendant No.3 will be put to irreparable loss which cannot be compensated in terms of money. Hence, the plaintiffs prayed to allow I.A.No.6.

3. Per contra, the plaintiffs have filed objections to I.A.No.6 contending that the averments made in the affidavit annexed to the I.A.No.6 are false. The suit properties are in joint possession and enjoyment of the plaintiffs and that of defendant No.1 to 3. This Court has passed the stay order from

alienating the suit schedule A properties. The suit properties are the joint family properties. The defendant No.4 without the knowledge of the plaintiffs and other defendants got created M.R.No.30/2012-13 without the probate order from the Hon'ble District Court. On the basis of said document, the defendant No.4 has alienated the suit property in favour of the defendant No.3 under a sale deed. On the basis of said document, the defendant No.3 got entered her name alone. The plaintiffs recently came to know about the alleged transactions. Immediately, the plaintiff No.3 had filed objections to the revenue officials on 21/03/2022 not to effect mutation on the basis of sale deed. The Will deed and the sale deed are not binding on the rights of the plaintiffs. The defendant No.3 had no right in the suit schedule 1A(3) property. The defendant No.3 is not the absolute owner of the above said property. As the plaintiffs

and the defendant No.1 to 3 are the joint owners in possession of suit properties, the question of obstructing to possession of the the defendant No.3 by the plaintiffs never arise at all. In Karam Singh and Anr v/s Lakhbir Kaur and others reported in CCC 2011 (3) 162, it is held that when possession of all co-sharers is joint relief of injunction cannot be sought either of the co-sharers and the only relief which is available to the co-sharers is to seek partition by metes and bounds. Hence, the plaintiffs prayed to dismiss I.A.No.6.

4. Heard arguments of learned respective counsels, reply arguments of learned counsel for defendant No.3 on I.A.No.6.

5. Perused the materials available on record.

6. The points that arise for consideration and determination are as under:-

1. Whether the defendant No.3/applicant has made out a prima-facie case?

2. Whether balance of convenience lies in favour of the defendant No.3 when compared to that of plaintiffs with respect to I.A.No.6?
3. Whether irreparable loss will be caused to the defendant No.3 when compared to that of plaintiffs with respect to I.A.No.6?
4. What order?

7. This Court answer above points as under:-

Point No.1: In negative.

Point No.2: In negative.

Point No.3: In negative.

Point No.4: As per final order for
following:-

REASONS

8. Point No.1 to 3: These points are taken together for common discussion as they are interlinked to each other and to avoid repetition of facts.

9. This is a suit for partition and separate possession to allot 1/5th share each to the plaintiffs in suit schedule properties.

10. The defendant No.3 has filed I.A.No.6 to restrain the plaintiffs from causing obstruction to the possession and enjoyment over suit schedule 1A property bearing R.S.No.175/2 measuring 5 acres 32 guntas.

11. The learned counsel for defendant No.3 has argued that the defendant No.3 has purchased R.S.No.175/2 measuring 5 acres 32 guntas from the defendant No.4 on 10/03/2022 by way of registered sale deed. Since from the date of purchase, the name of the defendant No.3 is appearing in revenue records of R.S.No.175/2 and is in possession and enjoyment of the suit schedule property bearing R.S.No 175/2. This being fact, the plaintiffs on one or other grounds are causing obstruction to the possession and enjoyment of the defendant No.3 over suit schedule property bearing R.S.No.175/2 measuring 5 acres 32 guntas. Hence, the defendant No.3 prayed to allow I.A.No.6.

12. The learned counsel for the plaintiffs has argued that the plaintiffs, defendant No.1 to 3 are in joint possession of suit schedule properties. There is no

question of obstruction as prayed by the defendant No.3. Hence, the plaintiffs prayed to dismiss I.A.No.6.

13. On careful consideration of materials available on record, it is settled principle of law that the relief of injunction can be sought by a co-sharer against other co-sharer when such a co-sharer happens to be in exclusive possession of the land to the exclusion of other co-sharers, but when the possession of all the co-sharers is joint, relief of injunction cannot be sought by either of the co-sharers and the only relief which is available to the co-sharer is to seek partition by metes and bounds.

14. Even though the defendant No.3 has purchased suit schedule property, it is the case of the plaintiffs that they are also in joint possession of suit schedule property. The plaintiffs, defendant No.3 have become co-sharers and their status being owner and the possession being joint, the defendant No.3 cannot seek relief of injunction against the plaintiffs from causing obstruction to the possession and enjoyment of the defendant No.3 over suit schedule property. The

defendant No.3 at this stage, has failed to prove her exclusive possession over suit schedule property. At this stage, the defendant No.3 has not made out a prima-facie case. Balance of convenience do not lie in favour of the defendant No.3. More comparative loss and hardship will be on the plaintiffs when compared to that of defendant No.3 if I.A.No.6 is allowed. Hence, looking to the facts and circumstances of case, this Court inclines to answer point No.1 to 3 in negative.

15. Point No.4: In view of foregoing discussions, this Court proceed to pass the following:-

ORDER

I.A.No.6 filed by the defendant No.3
U/O 39 R.1 and 2 of CPC is dismissed.

Under these circumstances, no order
as to costs.

Looking to the facts and
circumstances of case as this suit involves
senior citizens, respective parties along

with their respective counsels are directed to assist the Court for speedy and expeditious disposal of suit within six months.

(Dictated to the Stenographer, transcribed by him and corrected by me and then pronounced in the open Court on this the 10th day of April, 2024)

Sd/- 10/04/2024

(Smt.P.S.SADARJOSHI)
Prl. Senior Civil Judge and CJM
GADAG.