

**IN THE COURT OF PRL CIVIL JUDGE AND JMFC
AT GADAG**

Present:- Sri. Arun Chougule,
B.A.LL.B.[Hons.]

Prl. C.J. & JMFC., Gadag.

Dated this the 8th day of December- 2023

ORIGINAL SUIT NO.86/2019

PLAINTIFFS: Sri Hale Banashankari Devi of Betageri Tq:Gadag
A trust registered under the provisions Bombay
Public Trust Act under No.A-1602(DWR)
represented by its trustees.

- 1) Shri. Rajendra S/o Fakirappa Baradwad,
Age: 65 Years, Occ:Retd. Employee,
R/o Mallarayan Katti Oni, Near Tenginkai Bazar,
Betageri, Tq:Dist:Gadag.
- 2) Shri. Basappa S/o Prabhanna Gutti,
Age: 66 Years, Occ:Pvt. Service,
R/o Hosagaradi Oni, Banasankari Road, Betageri.
- 3) Shri Mahabaleshwarappa @ Mahabaleshwar S/o
Ayyappa Jujagar
(Dead)
- 4) Shri. Sadanand S/o Gurunathappa Honnalli,
(Dead)
- 5) Shri Rajakumar S/o Shyamanna Hattikal
Age: 46 Years, Occ:Advocate,
R/o Betageri Mallarayan Katti Oni,
Betageri, Tq:Dist:Gadag.

- 6) Shri. Vansantappa S/o Sankappa Nandaragi
(Dead)
(By Sri. S.S.S Advocate)

-V/S-

- DEFENDANTS** :-
- 1) Shri. Dhirendra Bheemaraao Huilgol,
Age: 66 years, Occ:Agriculture,
R/o Burabure Plot, Panchaxari Nagar,
Gadag.
 - 2) Shri Shriranga Bheemaraao Huilgol,
Age: 64 years, Occ:Business & Agriculture,
R/o K.V. Joshi, K.C.Rani Road,
Gadag.
 - 3) Shri. Shrinivas Bheemaraao Huilgol,
Age: 62 years, Occ:Agriculture,
R/o Opposite Municipality, Gadag
 - 4) Venkatesh S/o Ramachandra Harlapur,
Age: 60 years, Occ:Business,
R/o Kustagi Chawl, Betageri.
 - 5) Ravindra S/o Ramachandra Harlapur,
Age: 58 Years, Occ:Business,
R/o Kustagi Chawl, Betageri.
 - 6) Raghunath S/o Ramachandra Harlapur,
Age: 56 Years, Occ:Business,
R/o Kustagi Chawl, Betageri.
 - 7) Shrinivas S/o Govind Harlapur,
Age: 54 Years, Occ:Business,
R/o Kustagi Chawl, Betageri.
 - 8) Vidya Dan Samiti Gadag,
by its President, Dhirendra Bheemaraao Huilgol
Age: 66 years, Occ:Business,
K.C.Rani Road, Gadag

- 9) Sri Bistappa S/o Fakeerappa Dandin,
Age: 81 years, Occ:Business,
R/o Vidya Nagar, Masari, Gadag
- 10) Kanakadas Sikshana Samiti Gadag by its
president
Sri Bistappa S/o Fakeerappa Dandin,
Age: 81 Years, Occ:Business,
R/o Vidya Nagar, Masari, Gadag
- 11) Smt. Shubhalaxami W/o Dheeranna Huilgol,
Age: 59 years, Occ:Business,
R/o Burabure Plot, Panchaxari Nagar,
Gadag.
- 12) Gangappa S/o Kalappa Badiger,
Age: 60 years
Occ:Business,
R/o Kantipete, Guledagudda, Tq:Badami.
- 13) Smt. Bhagavva @ Basawwa W/o Prakash
Sutar, Age: 58 years,
Occ:Business, R/o Kantipete Guledagudda,
Tq:Badami.
- 14) Shekhrappa @ Shekhar S/o Kalappa Badiger,
Age: 56 years, Occ:Business,
R/o Kantipete, Guledagudda, Tq:Badami.
- 15) Smt. Sulochana W/o Siddappa Kambar,
Age: 54 years, Occ:Business,
R/o Kaladagi, Tq:Hunagund,
Dist:Bagalkot.
- 16) Shri Mohan S/o Dundappa Badiger,
Age: 59 years, Occ:Business,
R/o Kaladagi, Tq:Hunagund,
Dist:Bagalkot.

- 17) Smt. Vimala W/o Narayan Sutar,
Occ:Business, Age: 59 years
R/o Kaladagi, Tq:Hunagund, Dist:Bagalkot.
- 18) Shri Veerappa @ Veeranna S/o Dundappa
Badiger, Occ:Business, Age: 52 years,
R/o Kaladagi, Tq:Hunagund, Dist:Bagalkot
- 19) Tuljanasa S/o Lobosa Kabadi,
(Dead)
- 20) Sri. Manjunath S/o Narayanasa Kabadi,
Age: 52 Years, Occ:Business,
R/o Hatalageri Road, Masari, Gadag.
- 21) Sri. Lobosa S/o Narayanasa Kabadi,
Age: 47 Years, Occ:Business,
R/o Hatalageri Road, Masari, Gadag.
- 22) Sri. Nagaraj S/o Narayanasa Kabadi,
Age: 42 Years, Occ:Business,
R/o Hatalageri Road, Masari, Gadag
- 23) Smt. Rajeshwaribai W/o Jaganath Ratan,
Age: 50 Years, Occ:Business,
R/o Aradika Apartment, 1st floor, H.No.103,
Near Seventh Day School, Bhavani Nagar,
Hubballi.
- 24) Smt. Subhadrabai W/o Arjunasa Kabadi,
Age: 67 Years, Occ:Business,
R/o Near Ambabhavani Temple, Kabadi Galli,
Betageri, Tq:Gadag.
- 25) Ramachandrsa @ Ramusa S/o Arjunasa
Kabadi, Age: 36 Years, Occ:Business,
R/o Hosagaradi Oni, Near Hale Banashankari
Temple, Betageri, Tq:Gadag.

- 26) Laxmansa S/o Arjunasa Kabadī,
Age: 32 Years, Occ:Business,
R/o Hosagaradi Oni, Near Hale Banashankari
Temple, Betageri, Tq:Gadag.
- 27) Smt. Bharatibai W/o Sanjusa Raibagi,
Age: 40 years, Occ:Business,
R/o Kaddi plot, Near Airtel Tower,
Kustagi Rod, Gajendragad, Tq:Ron, Dist:Gadag
- 28) Smt. Roopa @ Roopabai W/o Anilsa Megharaj,
Age: 38 Years, Occ:Business,
R/o Door No.2, Ganiger, D. Line,
Jumma Masjid Road cross, Near Mathad
Complex, III Floor, 10th Cross, Kabban Peth,
Bangalore-2.

**(D1 to 3, 8 &11-By Sri. S.A.K Advocate
D4 to 7, 12 to 17 & 18 to 28-Ex parte
D9 & 10-By Sri S.R.G. Advocate
D19(a) to (e)-By Sri K.L.P Advocate)**

:: In IA.No.18:

Applicants/Defendant/s :15) Smt. Sulochana W/o Siddappa Kambar,
and others
-V/s-

Opponent/Plaintiff/s:- Sri Hale Banashankari Devi of Betageri
Tq:Gadag
A trust registered under the provisions
Bombay
Public Trust Act under No.A-1602(DWR)
represented by its trustees

i.	<i>Provision under which the application is filed</i>	Under Order 9 rule 7 of CPC
ii.	<i>Relief sought for</i>	Set aside the order.
iii.	<i>The date on which the application is filed</i>	05-10-2023
iv.	<i>Number of the application</i>	18/2023
v.	<i>The date on which the objections are filed by different opponents</i>	07-11-2023
vi.	<i>The date on which the orders were passed on the said application.</i>	08-12-2023

ORDER ON IA.No.18

The defendant No.15,17 and 18 have filed present application U/O 9 Rule 7 of CPC seeking to set aside the order placing them *ex parte*.

2. Defendant No.15 has sworn to an affidavit in support of the application stating that the applicants were residing at Goa for their livelihood. That even during Corona the applicants were residing at Goa. Therefore, notice of the suit was not served upon them and they were not aware of the present proceedings. As such, they could not appear before the court and this court has placed them *ex parte*. However, the applicants recently came to know about the present suit and thereafter, appeared through their counsel. Hence, the applicants pray to allow the application.

3. The plaintiffs filed objections contending that though summons was duly served upon the applicants in the year 2020, they deliberately remained absent with an intention to delay the proceedings. That, the applicants and their relatives are watching the proceedings and now at the instant of some other persons, who are in hurry to create deeds from the applicants in respect of portion of suit properties, have come up with false case. It is contended that the applicants have no right or interest over the suit property. The plaintiffs have also pleaded regarding the facts of the case in their objections, which being irrelevant have not been discussed here. On these grounds, the plaintiffs pray to dismiss the application with cost.

4. Heard the arguments of both the side.

5. After hearing the arguments and perusal of pleadings and records, the following points arise for my consideration.

1. Whether the application deserves to be allowed?

2. What order?

6. My findings on the above points are as under:

Point No.1 : In the affirmative

Point No.2 : As per final order for the following:

REASONS

7. **POINT NO.1** : The plaintiffs have filed the suit seeking the relief of recovery of possession of suit properties from defendant No.1 to 11, for declaration that the sale deeds executed in favour of defendant No.9,10 and 11, and mortgage deed executed in favour of defendant No.19 are void, abinitio, illegal and not binding upon the plaintiffs. The plaintiffs are also seeking to award mesne profits from the date of suit till delivery of possession.

8. Order sheet discloses that after registration of the suit, suit summons was issued to the defendants. It can be seen that, summons issued to the defendant No.18 through RPAD was returned on 23-07-2019 as refused and he was placed *ex parte*. Summons to the defendant No.15 and 17 was issued through advertisement in daily news paper and they were placed *ex parte* on 17-08-2021.

9. The records show that the plaintiffs have got examined PW-1 and 2 on their behalf and learned counsel for defendant No.9 and 10 has conducted cross-examination of said witnesses. At this stage the defendant No.15,17 and 18 have filed present application seeking to set aside the order placing them *ex parte*.

10. The above discussion shows that the applicants/defendant No.15 and 17 were not served personally but service was effected through substituted process. Moreover, rights of the parties in respect of immovable properties are involved in the matter. As such, this

court is of the opinion that, the applicants have to be given an opportunity to contest the suit. Hence, the application deserves to be allowed. Accordingly, point No.1 is answered in the affirmative.

11. **POINT NO.2:-** In view of the above discussion, the following:

ORDER

I.A.No. 18 filed by the defendant Nos.15,17 and 18 under Order 9 Rule 7 of C.P.C is hereby allowed and Order placing the said defendant No.15,17 and 18 *ex parte* is hereby set aside.

Vakalath filed by learned S.B.C Advocate for defendant Nos.15,17 and 18 is taken on record.

No order as to costs.

(Dictated to the stenographer, transcribed by her, revised by me and after corrections, pronounced in the Open Court on this the 8th day of December 2023.)

(Arun Chougule)
Prl. C.J. and JMFC, Gadag