

**IN THE COURT OF THE SENIOR CIVIL JUDGE &  
JMFC, ARSIKERE**

**DATED THIS THE 9<sup>th</sup> DAY OF APRIL 2025**

**Present: Sri.Kirankumar D.Wadigeri, B.A.L., L.L.B.,  
Senior Civil Judge & JMFC.,  
Arsikere.**

**O.S. No.130/2023**

Plaintiff/  
Applicant : Sri Umamaheshwarappa S.  
S/o Late Siddamalaiah,  
Aged about 66 years,  
R/o Sankihalli Village,  
Near Anjaneyaswamy temple,  
Sankihalli Post, Javagal Hobli,  
Arsikere Taluk, Hassan District.  
  
(By Sri S.U.I. Advocate)

**-V/s-**

Defendants/  
Opponents : 1) Sri Sadashivappa,  
S/o Late Siddamalaiah,  
Aged about 64 years,  
R/o Sankihalli Village,  
Near Anjaneyaswamy temple,  
Sankihalli Post, Javagal Hobli,  
Arsikere Taluk, Hassan District.

(D-20, 22, 25 by Sri K.B.D., Advocate)  
(D-2 to 5, 7 to 10, 15, 19, 20, 22, 24  
and 25 by Sri D.M.N., Advocate)  
(D-1, 6, 11 to 14, 16 to 18 & 23 - Exparte)

**ORDERS ON I.A.Nos.7 and 8**

The plaintiff has filed I.A.No.7 under Order 6 Rule 17 r/w  
Section 151 of CPC to permit him to amend the plaint as stated in

the application. I.A.No.8 is filed under Order 40 Rule 1 r/w Section 151, 94(e) of CPC to appoint receiver to collect or deposit in the Court the lease amount and profit of item Nos.1, 2, 3 and 9 of 'A' schedule properties till disposal of the suit.

2. The plaintiff in his affidavit filed along with I.A.No.7 has stated that, he filed the suit for partition and separate possession and declaration and other reliefs. That one Siddamallaiah had died intestate on 25.6.1969 leaving behind him and defendant Nos.1 to 19 as his legal heirs. He acquired some of the properties by way of succession and during his lifetime he has purchased some other properties out of joint family nucleus in his name and in the names of his sons. So, after the death of Siddamallaiah, he and defendant Nos.1 to 19 have succeeded to the estate of Siddamallaiah. After the demise of Siddamallaiah, his first son Basavaraju had changed katha in his name in respect of the suit properties. Further, the proposed properties as shown as 'D' schedule properties are also the joint family properties and recently he came to know about the same and hence, it is necessary to insert those properties in the plaint schedule. If the application is allowed, no harm or injury will be caused to the other side and nature of the suit will not be changed. Hence, it is prayed to allow I.A.No.7.

3. The plaintiff in his affidavit filed along with I.A.No.8 has stated that, the suit item No.1 is consisting of coconut, areca-nut, Mango trees and also growing ginger crop. The defendant Nos.1 to 3 and 7, 11 and 15 are receiving the said profit of rupees more than 3 lakhs per year. So, the said income is the joint family income and it is to be divided between all the family members of Siddamallaiah. Further, suit item Nos.2 and 3 have been given on lease by those defendants in which ginger crop is growing and they are not distributing the profit to all the family members. Further, in suit item No.9 is also consisting of Coconut and Mango trees and the profit derived from the said property have not been distributed by those defendants. Therefore, it is necessary to appoint the Court Commissioner and to deposit the lease amount and profit amount till disposal of the suit. Hence, it is prayed to allow I.A.No.8.

4. The defendant Nos.2 to 5, 7 to 10, 15, 19, 20, 22, 24 and 25 have filed their objections to these applications and contended that after filing of the written statement this application is not maintainable and only to fill up the lacuna of the plaint averments, the plaintiff has come up with this application. Further, only to harass them, the plaintiff has filed this false suit along with this application. Further, it is contended that, already there was a

partition about 32 years ago i.e., on 27.2.1993 and the same was acted upon and their names have been mutated respectively and they are enjoying their respective properties separately. Now the plaintiff with an intention to grab their properties has filed this false suit along with these applications and hence, prayed to dismiss I.A.Nos.7 and 8.

5. Heard both sides on I.A.Nos.7 and 8.

6. Then the following points arise for consideration of this Court are as under:-

- 1) Whether the plaintiff/applicant has made out sufficient grounds to allow I.A.No.7?
- 2) Whether the plaintiff/applicant has made out sufficient grounds to allow I.A.No.8?
- 3) What order?

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

- Point No.1 : In the **Affirmative**  
Point No.2 : In the **Negative**  
Point No.3 : As per final order  
for the following:

### **REASONS**

8. **Point Nos.1 and 2:** Both the points are inter-connected with each other. Hence, in order to avoid repetition of facts and

evidence, both the points are taken together for consideration at one stretch.

9. The plaintiff has filed the suit for partition, separate possession, declaration and other reliefs. That one Siddamallaiah had died intestate on 25.6.1969 leaving behind him and defendant Nos.1 to 19 as his legal heirs. He acquired some of the properties by way of succession and during his lifetime he has purchased some other properties out of joint family nucleus in his name and in the names of his sons. So, after the death of Siddamallaiah, he and defendant Nos.1 to 19 have succeeded to the estate of Siddamallaiah. After the demise of Siddamallaiah, his first son Basavaraju had changed katha in his name in respect of the suit properties.

10. Now in I.A.No.7 the plaintiff is claiming that the proposed properties are also the joint family properties which have been acquired by Siddamallaiah in the names of his sons who are the above said defendants, in which he is also having equal rights of share. No doubt, the defendants have filed their written statement but in the partition suit, at any stage, the properties can be inserted and the burden is on the plaintiff to prove that the proposed properties are also the joint family properties. At the same time,

the defendants are also having every chances to prove their defence as contended in their written statement as well as in the objections filed in I.A.No.7. So, the plaintiff has made out grounds to allow I.A.No.7.

11. As far as I.A.No.8 is concerned, the learned counsel of the plaintiff has relied the decision reported in **2001(3) SCC 176 in between Kasturi Bai and Others V/s Anguri Chaudhary**, in which it is held that:

*Civil Procedure Code, 1908 — Or. 40 R. 1 — Third-party Receiver — Appointment of Where in a suit for partition and separate possession, Appellant I-Defendant 1, an undisputed heir to the suit property, was an extremely old lady unable to carry out duties such as collecting rent from tenants of disputed property, maintaining accounts, and ensuring proper maintenance of properties concerned and where allegations regarding bonafides of other appellant-defendants had been made by respondent in the plaint, held, High Court rightly ordered appointment of a third party as Receiver to discharge the duties*

Further, he relied the Judgment of **Hon'ble High Court of Karnataka passed in MFA No.200460/2021 dated 19.11.2024 in between Chandappa V/s Smt.Ningamma and Another.**

12. In this case in hand, the plaintiff has also claimed the relief of mesne profits and first of all, he has to establish that the said

properties are the joint family properties of the plaintiff and defendant Nos.1 to 19. As he has already claimed the relief of mesne profits and if he succeeds in the same, then he can file separate petition for mesne profits. On the other hand, the defendants have specifically taken contention that already there was a partition about 32 years ago. Then at this stage, without touching the merits of the case, it is not proper to direct the defendants to give accounts of profits and to appoint the receiver to collect the profits and deposit the same before the Court. So, without full pledged trial, it is not proper to appoint the Court Commissioner as prayed by the plaintiff. So, the plaintiff has not made out grounds to allow I.A.No.8. Hence, **my finding to point No.1 is in the Affirmative and point No.2 is in the Negative.**

13. **Point No.3:** In view of the reasons and finding given to point Nos.1 and 2, the following is made:

### **ORDER**

I.A.No.7 filed by the plaintiff under Order 6 Rule 17 r/w Section 151 of CPC is hereby allowed and the plaintiff is permitted to amend the plaint as stated in the application.

I.A.No.8 filed by the plaintiff under Order 40 Rule 1 r/w Section 151, 94(e) of CPC are hereby dismissed.

No order as to costs.

For amendment and amended plaint.

(Dictated to the Stenographer, transcribed and computerized by him, corrected and then pronounced by me in the open Court on 9<sup>th</sup> day of April 2025)

**(Kirankumar D.Wadigeri)**  
**Senior Civil Judge & JMFC,**  
**Arsikere.**