

**IN THE COURT OF PRINCIPLE SENIOR CIVIL JUDGE
AND CJM, HAVERI. AT: HAVERI**

PRESENT:

Sri. Laxman R. Kurane, B.Com., LL.M,
Prl. Sr. Civil Judge & CJM,
Haveri.

Dated this 8th day of December 2021

O.S. No.108/2016

Plaintiffs : 1. Basavaraj S/o Mahadevappa Malagi,
Age: 42 years, Occ: Agriculture
R/o: Devagiri-Yallapur,
Tq:Dist: Haveri.

Vs.

Defendants: 1.Ningappa S/o Mahadevappa Malagi,
Age: 50 Years, Occu: Agriculture & Service,
R/o: Devagiri-Yallapur, Now At: Navodaya
School, Hangal.
Tq:&Dist: Haveri & Others.

ORDER ON IA NO.XIII

Applicants: 1. Basavaraj S/o Mahadevappa Malagi,
(Plaintiffs) Age: 42 years, Occ: Agriculture
R/o:Devagiri-Yallapur, Tq:Dist: Haveri.

(By Sri. S. S. Hiretanad,Advocate)

Vs.

Opponents: 1. Ningappa S/o Mahadevappa Malagi,
(Defendants) Age: 50 Years, Occu: Agriculture & Service,
R/o: Devagiri-Yallapur, Now At: Navodaya
School, Hangal. Tq:&Dist: Haveri & Others.

(By Sri. S. D.Malali, Advocate)

ORDER

The plaintiff has filed the above application prays to restrain the defendants from obstructing his joint possession and enjoyment of suit schedule property, in any manner till disposal of this suit.

2. This is a suit filed by plaintiff against the defendants for relief of partition and separate possession of their 1/3rd share in the suit schedule property. The plaintiff stated that the suit properties are belongs to his grand father by name Koteppa Neelappa Malagi, he died long back. After the death of Koteppa Neelappa Malagi suit schedule 'A' property was fallen to the share of father of plaintiff and his daughter Gangavva. As per the desire of Koteppa Neelappa Malagi the entire property will in the possession and enjoyment of Mahadevappa Malagi the father of plaintiff and defendants. In the year 1986 there was a family partition in between the Mahadevappa and his heirs of deceased Gangavva. The suit 'A' property was fallen to the share of the father of plaintiff and defendants. During the life time of propositus, he conducted the marriage of defendant No.3 by giving money and gold ornaments and also given 01 acre 22 guntas of

land in R.S. No.74/1. The deceased Koteppa Neelappa Malagi in the presence of witnesses and parties to this suit had made the temporary arrangements by executing the partition deed, dated 03.07.2003 and accordingly plaintiff has been allotted 30 guntas of land towards southern side of suit schedule 'A' property, after the death of Mahadevappa the suit properties fallen to the share of plaintiff and defendants No.1 & 2 only. In the case the R.S. No.74/1 is alienated, then the plaintiff and the defendants No.1 & 2 should give 3,00,000/- to the 3rd defendant. But the said property was alienated by Koteppa Neelappa Malagi during his life time. The defendant No.3 having no share in the suit schedule properties, she has been made as formal party to this suit. The plaintiff stated that, the defendant No.2 with ill-advice of his ill-wishers again tried to obstruct the possession and enjoyment of plaintiff over the suit schedule properties. Even the plaintiff made several requests and advise the defendants from elders of locality, but has not ready to heed request and advice of elders of locality. The plaintiff stated that, he filed the complaint against the defendant No.2 in C.C.No.18/2017 and the same is pending for disposal before the Hon'ble Civil Judge and JMFC

Haveri. The defendants with ill-advice of their ill-wishers has filed false complaint against him and his wife in C.C.No.960/17 and same is also pending for disposal before the Hon'ble Civil Judge and JMFC Haveri. The plaintiff stated that, in the first week of June 2021, the defendants tried to obstruct his joint possession over the suit schedule property.

3. The defendants have filed objection to the said application stated that, the plaintiff has filed the above application with false submission. The defendants also submitted that, averments made by the plaintiff that the defendant No.2 is obstructing the plaintiff joint possession and enjoyment of suit schedule property is false. The defendants also denied that, the plaintiff requested them and also advised them through the elder persons. The defendants also stated that, the plaintiff has filed CC.No.18/2017 making false allegations. The defendants also denied that, on 06.06.2021 the CPI Haveri Rural Police Station has advised the defendants not to obstruct joint possession of plaintiff. The defendants stated that, the plaintiff in the affidavit admitted that he and defendants are in joint possession and enjoyment of suit schedule property

and if the temporary injunction has granted to the plaintiff will dispossess them from the suit schedule property. The defendants stated that, the plaintiff has not in possession of the suit schedule properties. The defendants stated that, every defendant has equal right in the suit schedule property along with plaintiff.

4. The deceased Mahadevappa had executed will in favour of 2nd defendant on 03.03.2016 in respect of property allotted to his share in R.S. No.74/1 measuring 1 acre 22 guntas. The deceased Mahadevappa at the time of executing the will was having sound state of mind and had capacity to execute the will. After the death of Mahadevappa as per the will, the 2nd defendant is in possession and enjoyment of suit schedule property. In the life time of Mahadevappa had alone enjoyed the suit schedule property. The plaintiff never residing at Devegiriyallapur village and is residing in Haveri. The defendant No.2 submitted that, neither the plaintiff nor other defendants not having any right or title in respect of suit schedule property. Hence the 2nd defendant prays for dismissal of application.

5. From the above said facts, points arise for my considerations are:-

POINTS

1. *Whether the plaintiff proves that prima-facie case against defendants ?*
2. *Whether the plaintiff proves that the balance of convenience lies in his favour?*
3. *Whether the plaintiff proves that he will suffer irreparable loss than the defendant No.2 ?.*
4. *What order?*

6. My answer to the above points are as under:-

Point No.1: In the Negative,
Point No.2: In the Negative,
Point No.3: In the Negative,
Point No.4: As per final order, for the
Following:

REASONS

7. **Point No.1 to 3:-** These Points are interlinked with each other, therefore, to avoid the repetition of facts all the points are taken together for discussion. The plaintiff stated that, suit schedule properties belongs to Koteppa Neelappa Malagi the grand father of them and defendants and after the death of Koteppa Neelappa Malagi the suit schedule 'A'

property was fallen to the share of father of plaintiff and his daughter Gangavva. As per the desire of Koteppa Neelappa Malagi the entire property was in the possession and enjoyment of deceased Mahadevappa Malagi the father of plaintiff and defendants. It is stated that in the year 1986 there was a family partition in between the Mahadevappa and his heirs of deceased Gangavva. The suit 'A' property was fallen to the share of the father of plaintiff and defendants. The plaintiffs further submitted that the marriage of defendant No.3 was performed by propositus by giving money and gold ornaments and also the land to the extent of 1 acre 22 guntas in Sy.No. 74/1 was given to the defendant No.3. The plaintiff stated that, he and defendant No.1 & 2 were in joint possession and enjoyment of portion of their respective share as per the agreement executed by their father dated 03.07.2003. The plaintiff stated that, the defendant No.2 is obstructing his possession over the suit schedule property. The defendant No.2 in the objection has denied the above said facts and stated that, when the plaintiff himself admitted that he and defendants are in joint possession and enjoyment of suit schedule property, he cannot sought for injunction order against Co-Owner in

respect of suit schedule property. The plaintiff has produced property extract Sy. No.74/1 standing in the name of Mahadevappa kotteppa Neelappa Malagi and Mahadevappa Ningappa Malagi and in cultivator column the name of plaintiff and defendants are jointly appeared in the Ex.P1. The plaintiff has produced Ex.P6 quotation of borewell and Ex.P7 Certificate of drilling report to show that the borewell has been drill in the land of Sy.No.45/3 in the name of Basavaraj Malagi i.e., plaintiff. On the basis of the Ex.P6 & P7 it can't be relied that the plaintiff himself has drill the borewell in Sy.No.45/3. The said documents can't be lead to show that the plaintiff himself drill the borewell in the suit schedule property. The plaintiff has filed this suit on 23.06.2016 and from 23.06.2016 till filing of IA.No.13 dated 26.08.2021, the plaintiff has not made any allegations stating that the defendant No.2 has obstructing his possession over the suit schedule property.

8. The plaintiff has not specifically pleaded which portion in the suit schedule property has been fallen to his share and which portion is fallen to the share of defendants. The plaintiff has also not mentioned boundaries of his portion in

the plaint or in the affidavit filed along with IA.No.13. Admittedly, the plaintiff and defendants are in joint possession and enjoyment of suit schedule property, there should be some specification of their possession in the suit schedule properties. In the absence of the above said facts it can't be stated that the plaintiff and defendants are in possession of their respective portions as per agreement dated 02.09.2003 made by deceased Mahadevappa. No injunction can be granted against the co-owners in respect of the suit schedule property. If the injunction is granted, there is a chance of further litigation and chance of restraining the defendants to use their share in the suit schedule property which is admitted by the plaintiff in the suit. If the injunction is granted, definitely it will effect the plaintiff as well as defendants to enjoy the suit schedule property. The plaintiff is not made prima-facie case and balance of convenience to grant temporary injunction as prayed in IA.No.13. Hence I hold **point No.1 to 3 in the Negative.**

9. Point No.4:- For the forgoing reasons stated above, I proceed to pass the following:

ORDER

IA No.13 filed by the plaintiff against defendants No.2 U/o 39 rule 1 & 2 R/w Sec.151 of CPC is dismissed.

No order as to cost.

sd/-

Prl. Sr. Civil Judge & CJM,
Haveri.