

KACB010019422022



**IN THE COURT OF PRL. DISTRICT AND SESSIONS
JUDGE, AT : CHIKKABALLAPURA**

Dated this the 23rd day of February -2023

Misc. No. 34/2022

Present :

Sri. C. RAJASEKHARA, B.Com., LL.B.,
Principal District and Sessions Judge,
Chikkaballapura.

PETITIONER/S:

1. Sri. Munikrishnappa
S/o Chikka Thimmaiah,
Aged about 48 Years,
2. Smt. Venkatalakshamma,
W/o Munikrishnappa,
Aged about 43 Years,

Both are residing at Adavigollavarahalli
Kasaba hobli, Chikkaballapura Tq.
[Rep.By. Sri. S. S- Advocate.]

//Versus//

RESPONDENT/S:

Sri. Manjunatha
S/o Doddappaiah,
Aged about 40 Years,
R/at, Adavigollavarahalli
village, Kasaba hobli,
Chikkaballapura taluk.
[Rep. By. Sri. R. S- Advocate]

ORDER

This petition is filed by the petitioners under
Section 24 of Civil Procedure Code for transferring suit in

OS No. 427/2019 pending before the Court of II Addl. Civil Judge & JMFC, Chikkaballapura to the court of Prl. Civil Judge & JMFC, Chikkaballapura and to club the same with OS No. 476/2019 and to try the same.

2. The brief facts of the case of the petitioners is that, the petitioners filed OS No. 476/2019 for Declaration and recovery of possession before the court of Prl. Civil Judge & JMFC, Chikkaballapura, against the respondent herein. The respondent filed OS No. 427/2019 for the relief of Permanent Injunction against the petitioners before the court of II Addl. Civil Judge and JMFC, Chikkaballapura. The suit filed by the petitioners is pending for evidence. The suit filed by the respondent is pending for evidence. The suit filed by the petitioners and respondent are connected to each other and property involved in both suits are one and the same. To avoid conflicting orders and judgments, it is necessary to combine both the suits. If both the suits are clubbed and heard together, no injustice will be caused to the respondent. Therefore, it is sought for transfer of OS No. 427/2019 to the court of Prl. Civil Judge & JMFC, Chikkaballapura and to club the same with OS No. 476/2019 and dispose of both the suits in accordance with law.

3. After filing of this petition, notice was issued to the respondent. In response to the notice respondent appeared through his counsel and filed objections.

4. The respondent filed objections contending that the petition is not maintainable under law or on facts. The property numbers and the extent involved in both the suits are different. The cause of action set out in both the cases are different. The reliefs claimed in both the suits are different. The petitioners intentionally filed this petition only to harass the respondent and delay the proceedings of the trial court. The petition is malafide and allegations made in the petition are false and untenable. The respondent filed suit in OS No. 427/2019 against the petitioners for permanent injunction. The respondent is the absolute owner and in possession and enjoyment of the suit schedule properties and the same is his ancestral and joint family property. Originally the Sy. No. 63 totally measuring 3 acres 01 guntas belong to Pilla Kakappa and Dodda Kakappa. They have partitioned the joint family properties under registered partition deed dated 26.12.1936 vide No. 837 and both have got 1 acre 20 ½ guntas each in Sy. No. 63. Pilla Kakappa had a son by name Chikka Venkatarayappa who is the grandfather of respondent. After the death of Pilla Kakappa, the Khata and other revenue documents were transferred in the name of Chikka Venkatarayappa. After the death of Pilla Kakappa, his great grandchildren viz., Dodda Kempanna, Chikka Kempanna, Ashwathappa, Ramachandra, Kempanna and respondent, G. V. Kempanna, Venkatarayappa, Venkatappa and Venkata Narayanappa have partitioned the ancestral property by oral partition and the

respondent was allotted 30 guntas to his share vide MR No. 5/1997-98. During the said partition the father of respondent Doddappaiah was died and hence, the respondent made as one of the sharer. By virtue of the said partition, all the documents were standing in the name of respondent and he is paying taxes to the government. Further, it is contended that the petitioners are concerned to the branch of Dodda Kakappa. The petitioners have filed application before Survey authority without the knowledge and notice of respondent to survey Sy. No. 63. As per the new survey Sy. No. 63 was phoded and assigned new sy. No. 63/1 to 63/11. The respondent's share of 30 guntas land were fallen in 3 new survey numbers ie., Sy. No. 63/4 meausring 4 guntas, Sy.No. 63/7 measuring 16 guntas and Sy. No. 63/11 measuring 10 guntas. The respondent has also constructed house in sy. No. 63/7 and also raised mulberry crop in the remaining extent of the property. The petitioners have no manner of right, title or interest over the 30 guntas land which fallen to the respondent's share in 3 new survey numbers ie., Sy. No. 63/4 meausring 4 guntas, Sy.No. 63/7 measuring 16 guntas and Sy. No. 63/11 measuring 10 guntas. If the petition is allowed, the respondent will be put to immense hardship, loss and injury and if the petition is dismissed no prejudice will be caused to the petitioners. On these grounds the respondent prays for dismissal of the petition

5. Heard arguments of petitioners' counsel and the counsel for respondent.

6. The following points arise for my consideration:

1. Whether the petitioners have made out a case to withdraw OS No. 427/2019 from the file of II Addl. Civil Judge & JMFC, Chikkaballapura and transfer the same to the court of Prl. Civil Judge & JMFC, Chikkaballapura and to try along with OS No. 476/2019 or vice-versa?
2. What order?

7. My finding to the above points are as follows;

Point No. 1: In the Affirmative,

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

REASONS

8. Point No. 1:- It is the case of the petitioner that, the petitioners filed OS No. 476/2019 for Declaration and recovery of possession before the court of Prl. Civil Judge & JMFC, Chikkaballapura, against the respondent herein. The respondent filed OS No. 427/2019 for the relief of Permanent Injunction against the petitioners before the court of II Addl. Civil Judge and JMFC, Chikkaballapura. The suit filed by the petitioners is pending for evidence. The suit filed by the respondent is pending for evidence. The suit filed by the petitioners

and respondent are connected to each other and property involved in both suits are one and the same. To avoid conflicting orders and judgments, it is necessary to combine both the suits. If both the suits are clubbed and heard together, no injustice will be caused to the respondent. Therefore, it is sought for transfer of OS No. 427/2019 to the court of Prl. Civil Judge & JMFC, Chikkaballapura and to club the same with OS No. 476/2019 and dispose of both the suits in accordance with law.

9. In the present case, it is not in dispute that the petitioners herein filed OS No. 476/2019 seeking declaration and recovery of possession before the court of Prl. Civil Judge & JMFC, Chikkaballapura in respect of the landed properties bearing Sy. No. 63/6 (out of old sy. No. 63) (a) measuring 0-18 guntas and (b) 0.02.12 guntas, both situated at Adavigollavarahalli village, Kasaba hobli, Chikkaballapura taluk. It is not in dispute that respondent has filed OS No. 427/2019 seeking permanent injunction before the II Addl. Civil Judge & JMFC, Chikkaballapura in respect of properties (a) bearing old Sy. No. 63, new Sy. No. 63/4 measuring 0.04 guntas, (b) bearing old Sy. No. 63, new Sy. No. 63/7 measuring 0.16 guntas and (c) bearing old Sy. No. 63, new Sy. No. 63/11 measuring 0.10 guntas. All the three properties are situated at Adavigollavarahalli village, Kasaba hobli, Chikkaballapura taluk. The petitioners have sought for transfer of OS No. 427/2019 pending

before II Addl. Civil Judge & JMFC, Chikkaballapura to the court of Prl. Civil Judge & JMFC at Chikkaballapura or to transfer both the suits to any one court and to club the same, to avoid conflicting judgment and orders.

10. Whatever may be the objections filed by the respondent, the fact remains that the petitioners and respondent are parties in both the suits. So also, it is an admitted fact that the properties involved in both suits are one and the same. Both parties are relying upon the same partition deed and MR proceedings. Since both the suits are in respect of the same properties and though the reliefs are different, the rights of the parties are required to be adjudicated in the said suits. If both suits are tried separately by different courts, definitely there will be possibility of delivering conflicting judgments/orders. To avoid conflicting judgments/orders, it is just and necessary to try both suits by the same court. Therefore, considering the facts and circumstances, I am of the opinion that in order to avoid conflicting judgments/orders, it is just and necessary to withdraw OS No. 427/2019 from the court of II Addl. Civil Judge & JMFC, Chikkaballapura and transfer the same to the court of Prl. Civil Judge & JMFC, Chikkaballapura, to try along with OS No. 476/2019. It is left to the wisdom of the presiding officer to decide whether clubbing of both suits is necessary or not. With these observations, I answer point No.1 in the affirmative.

11. Point No. 2: In view of my findings on point No. 1, I proceed to pass the following;

ORDER

The petition filed by the petitioner under section 24 of CPC is allowed.

OS No. 427/2019 pending before the court of II Addl. Civil Judge & JMFC, Chikkaballapura is withdrawn and the same is transferred to the court of Prl. Civil Judge & JMFC, Chikkaballapura, to try the same along with OS No. 476/2019. It is left to the wisdom of the presiding officer to decide whether the clubbing of both suits is necessary or not.

There is no order as to cost.

Send the copy of this orders to both courts.

[Dictated to the JUDGMENT WRITER, directly on computer, revised and corrected by me, signed and then pronounced in the Open Court on this the 23rd Day of February-2023]

[C. RAJASEKHARA]

Prl. District and Sessions Judge,
Chikkaballapura