

KAHV710003802018



**IN THE COURT OF THE SENIOR CIVIL JUDGE AND
J.M.F.C., SHIGGAON**

DATED THIS THE 25th DAY OF JANUARY 2023

**Present: Smt. Fairoza H.Ukkali,
B.A.LLM.,
Senior Civil Judge & J.M.F.C.,
Shiggaon.**

O.S.91/2018

Plaintiffs: Smt.Gangavva W/o Malleshappa
Bandivad and another

V/s

Defendants: Smt.Chandrika W/o Prabhugouda
Doddamani and others.

I.A.XIX/2023

Applicant: Smt.Gangavva W/o Malleshappa
Bandivad and another

V/s

Opponents: Smt.Chandrika W/o Prabhugouda
Doddamani and others.

ORDER ON I.A. No.XIX

The plaintiffs have filed this I.A. under Order XL Rules
1 R/w Sec.151 of CPC, seeking to appoint Sri.S.M.Halemani

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Advocate, Hubballi as the Court receiver for the suit schedule properties.

2. In the affidavit, the applicant has stated that the plaintiffs have filed the suit against defendants seeking the relief of partition and separate possession claiming 1/5th share in the suit schedule properties which are ancestral properties and during the lifetime of Prabhugouda itself the husband of 6th defendant was looking after all the suit schedule properties and after the death of Prabhugouda, it is the husband of 6th defendant namely Sri.S.M.Halemani who is looking after the defendants No.2 to 5 and their welfare and is also maintaining the suit properties and therefore it is necessary to appoint him as receiver of the suit schedule properties.

3. The advocate for 1st defendant has filed objections to this IA by denying all the averments of applicant and has contended that the husband of 6th defendant namely S.M.Halemani Advocate is no way concerned to family of plaintiffs and defendants and if he is appointed as receiver to the suit properties there are very

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chances of he causing loss to the properties and the family. Hence the Advocate of 1st defendant has prayed to dismiss the application with cost.

4. I have heard on both side and perused record.

5. The points that arise for my consideration are:

1. Whether it is just and convenient to appoint Sri S.M.Halemani Advocate as receiver for the suit schedule properties?

2. What Order?

6. My answers to the points are as under:

Point No.1 : In the Negative

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

REASONS

7. **Point No.1** : The plaintiffs have filed this IA seeking to appoint the husband of 6th defendant namely Sri S.M.Halemani Advocate, Hubballi as the receiver of the suit schedule properties by contending that since the lifetime of

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Prabhugouda i.e., the husband of 1st defendant the said advocate is maintaining the suit schedule properties and even after his death he is looking after the suit schedule properties and is looking after the welfare of defendants No.2 to 5. As per the plaintiffs the husband of 6th defendant is already maintaining the suit schedule properties and therefore question of appointing him as receiver to the suit schedule properties does not arise.

8. When a receiver is sought to be appointed, the Court will appoint an independent person who is not interested in the suit properties or with the family affairs. In this case, the proposed receiver is the husband of 6th defendant and he is an interested person in the suit schedule properties and in the family affairs. Under such circumstances, he cannot be appointed as a receiver to the suit schedule properties.

9. Further the 1st defendant has taken up objection that if the husband of 6th defendant is appointed as receiver there are very chances of he causing loss to the suit schedule properties. Thus considering this objections

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raised by the 1st defendant and by considering fact that the husband of 6th defendant is not an independent person and that he is already maintaining the suit properties as per the plea of plaintiffs, it is not just and convenient to appoint him as receiver for the suit properties. Hence Point No.1 is answered in the Negative.

10. **Point No.2 :** For the aforesaid reasons and finding on Point No.1, I proceed to pass the following

ORDER

I.A. No.XIX filed Order XL Rule 1 r/w Sec.151 of CPC is rejected.

No order as to cost.

(On my dictation directly on computer typed by the Stenographer, print out taken by her, corrected and then pronounced by me in the Open Court on this the 25th Day of January 2023.)

(FAIROZA H.UKKALI)
Senior Civil Judge & J.M.F.C.,
Shiggaon.

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**(Operative portion of the order pronounced in the open
Court, vide separate judgment)**

ORDER

I.A No.II filed by plaintiffs under Order
XXXIX Rule 1 and 2 R/w Section 151 of CPC
is dismissed.

Considering the relationship between the
parties, no order as to cost.

Senior Civil Judge & J.M.F.C.,
Shiggaon

**(Operative portion of the order pronounced in the open
Court, vide separate judgment)**

ORDER

I.A. No.XIX filed Order XL Rule 1 r/w Sec.151 of
CPC is rejected.

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No order as to cost.

Senior Civil Judge & J.M.F.C.,
Shiggaon