

KAHV710011172017



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

DATED THIS THE 17th DAY OF DECEMBER 2022

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

O.S.175/2017

Plaintiff : Basavantappa S/o Veerappa Hosamani

V/s

**Defendants: 1. Smt.Prema W/o Vasudevagouda
Dyamanagoudar and others**

I.A.No.IX/2022

**Applicants: 1. Smt.Prema W/o Vasudevagouda
Dyamanagoudar and others**

V/s

Opponent: Basavantappa S/o Veerappa Hosamani

ORDER ON I.A. No.IX

The defendants have filed this I.A. under Order XXVI Rules 1 and 9 R/w Order XL Rule 1 and Sec.151 of CPC, seeking to appoint the commissioner/receiver to auction the suit property for every year for the best cultivation and deposit the amount so auctioned in the Court.

2. The plaintiff has filed objections to this I.A.
3. I have heard on both side and perused record.
4. The points that arise for my consideration are:
 1. Whether it is just and convenient to appoint a receiver for the suit property?
 2. What Order?
5. 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

6. **Point No.1** : The defendants have filed the application seeking to appoint the commissioner/receiver to auction the suit property for every year for the best cultivation and deposit the amount so auctioned in the Court. The plaintiff has filed objections contending that with false allegations the application has been filed. It si

averred that the plaintiff is aged 73 years and he has never caused any trouble to the possession of the defendants over the suit property. That the defendants have neglected to grow the crops in the suit land and with an intention to get an order as per their convenience have filed this application. That the plaintiff has never objected the defendants in cultivating the suit land. Hence the plaintiff has prayed to dismiss the application with cost.

7. The learned Counsel for defendants submitted that the defendants are residing 45 kms away from the suit land and the plaintiff being residing in the same village is not allowing the defendants to cultivate the crops and get the benefits, due to which the defendants are suffering irreparable hardship and loss. The learned Counsel for defendants by submitting that in order to provide justice to the defendants it is just and proper to appoint a receiver for the suit property has relied upon the judgments reported in **1964(1) Mys.L.J. 551 – Saraswathi Bai and others Vs. Kamala Bai, AIR 1987 Cal 194 – State Bank of India V/s. Jayshree Ceramics Pvt Limited, AIR 1970 Kar 141 – Srinivas Rao Vs. Baburao, 1965(2) Mys.L.J. 548 – Boregowda and another V/s. K. Channegowda and another and 1965(1) Mys.L.J. 342 – Iswara Shantry and another V/s. Ramakrishna Shastry and another.**

8. The learned Counsel for plaintiff submitted that as per the agreement the possession has not been given to the plaintiff and it is an admitted fact that the defendants are in possession of the suit property and the plaintiff being old aged has never obstructed for the possession of the defendants over the suit property and therefore the commissioner or receiver cannot be appointed. The learned Counsel for plaintiff argued that no just and convenient reasons are made out by the defendants for appointing the commissioner or receiver. Hence the counsel prayed for rejecting the application with costs.

9. The plaintiff has filed this suit seeking the relief of specific performance of contract, by contending that the husband and father of defendants No1 to 4 viz., Vasudevagouda and defendant No.5 have executed the agreement of sale on 22.01.2010 and the defendants have filed written statement denying the execution of sale agreement. When the matter was posted for defendants' evidence, the defendants filed an application to recall PW.1 for cross-examination and after allowing the said application when the matter was posted for cross-examination of PW.1, the present application has been filed. Further the order-sheet reveals that the suit is pending since 2014 and since their appearance the defendants have

dragged the proceedings by filing one or the other application. Out of 9 interim applications filed in this case, 7 applications are filed by the defendants.

10. On analyzing the facts of the case, it is forthcoming that it is not in dispute that till today the defendants are in possession of the suit property. Even in the affidavit annexed to this I.A., it is stated by the applicant in para No.7 that it is undisputed that the suit property is in actual possession of the defendants. In the objections, the plaintiff has admitted the possession of the defendants and has stated that he has never obstructed for the possession of the defendants.

11. In the Judgment reported in **1964 (1) Mys.L.J. 551 – Saraswathi Bai Vs. Kamala Bai** – it is held that – “*A mere apprehension of a party is no ground for the appointment of a receiver*”. It is further held – “*The receiver must be appointed on the principle of preserving property pending the litigation which is to decide rights of the litigant parties*”. In the light of this judgment on the mere apprehension that plaintiff may obstruct the defendants from cultivating the suit land, the receiver cannot be appointed. Further in this case the main issue to be decided is whether the Vasudevagouda and defendant No.5 have executed the sale agreement in favour of the

plaintiff or not and there is no dispute regarding the title of the suit property and therefore the receiver cannot be appointed.

12. In the Judgments reported AIR 1987 Cal 194 – **State Bank of India Vs. Jayshree Ceramics Pvt Limited**, AIR 1970 Kar 141 – **Srinivasa Rao Vs. Baburao** – it is held – *“where the property is in medio, that is to say, in the possession of no one, a receiver can readily be appointed”*. In the case on hand admittedly the defendants are in possession of the suit property and therefore in the light of these judgments, a receiver cannot be appointed.

13. In another judgment reported in 1965 Mys.L.J. 548 – **Boregowda and another Vs. K. Channegowda and another** – it is held – *“where the plaintiff and defendants are rival claimants to the land claiming under legal titles, the question as to which of the parties have better title has to be established in the suit, in such cases special circumstances must be established in order to take the suit land under the custody of the court by the appointment of receiver”*. In this case the plaintiff and defendants are not rival claimants to suit land and the plaintiff is not claiming his title, but he has filed the suit seeking the relief of specific performance of contract basing his claim on the agreement of sale and he has admitted the

title and possession of the defendants over the suit property. Therefore in the light of the above judgment, the receiver cannot be appointed.

14. In the judgment relied upon by the learned Counsel for defendants reported in **1965(1) Mys.L.J. 342 – Ishwara Shastry and another Vs. Ramakrishna Shastry**, a receiver was appointed in the suit for partition and as the present suit is for specific performance of contract, this judgment is not applicable to the case on hand.

15. The defendants being the owners in possession of the suit property are seeking to appoint a commissioner/receiver for the purpose of auctioning the suit land for cultivation. By seeking such order, the defendants want to use the court as an agent to maintain their land and such act of the defendants is not permissible under law. If the defendants are residing 45 kms away from the suit land, it is for them to appoint any local person on their behalf to auction the suit land for cultivation or to cultivate the suit land and they cannot seek the assistance of the court to maintain their land. Therefore the application filed by the defendants is devoid of merits and by filing this frivolous application, the defendants have caused abuse of process of law and hence the application deserves to be dismissed with costs.

16. In view of the above discussion, it is not just and convenient to appoint a receiver for the suit property. Hence Point No.1 is answered in the Negative.

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

ORDER

I.A. No.IX filed Order XXVI Rules 1 and 9 R/w
Order XL Rule 1 and Sec.151 of CPC is dismissed on
cost of Rs.500/-.

(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 17th Day of December 2022.)

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

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

ORDER

I.A. No.III filed under Order VI Rule 17 r/w
Section 151 of CPC is allowed on cost of Rs.300/-.

The defendants are permitted to amend the
written statement as proposed in the I.A.

Senior Civil Judge & J.M.F.C.,
Shiggaon Sitting At Savanur .