



**IN THE COURT OF SENIOR CIVIL JUDGE AT
ALAND, KALABURAGI DISTRICT.**

:PRESENT:

SRI. S.M. ARUTAGI.

B.Com. L.L.B., (Spl.)

DATED THIS THE 08th DAY OF DECEMBER 2023.

MISCELLANEOUS NO.19/2017

Petitioner/Plaintiff

Sushilabai W/o Late Ramrao
Kulkarni, Age: 75 Years, Occ:
Household Work, R/o Aland, Dist.
Kalaburagi.

(By Sri. B.A. Deshpande, Advocate)

-Versus-

Respondents/Defendants

1. Govind claiming to be adopted S/o
Ramrao Kulkarni, Age: 42 Years,
Occ: Agriculture, R/o Hiroli, Tq.
Aland, Dist. Kalaburagi.
2. Jayashri Claiming to be W/o
Ramrao Kulkarni, Age: 70 Years,



Occ: Household Work, R/o Hiroli, Tq.
Aland, Dist. Kalaburagi.

(R-1 & 2 By Sri. A.W. Asgar, Advocate)

**ORDER ON IA NO.4 FILED U/SEC 151 OF CPC BY
THE PETITIONER**

This is an application filed by the petitioner/plaintiff U/Sec., 151 of CPC seeking interim maintenance from the respondent No.1 for Rs.10,000/- per month by allowing the application in the interest of justice and equity.

2. In the affidavit annexed to the application, it is stated that since 1970, she started claiming the maintenance against her husband by name Ramrao Kulkarni and by virtue of decree dated 20-04-1995, she was receiving the maintenance from her husband during his life time. The defendant No.1 illegally got mutated his name in the lifetime of her husband behind back and even, the mutation does not confers



any title. However, the defendant No.1 is exclusively enjoying the suit property without paying any single paisa towards her maintenance.

3. It is further averred that the claim of the defendant No.1 about adoption is also not maintainable in the eye of law and she was legally wedded wife of her husband Ramrao and she is entitled for enjoyment of the suit property as sole surviving the legal heirs of her husband. But, the defendant No.1 with malafide intention to keep her harassing, not providing any maintenance. On the other hand, the present proceeding was dismissed for default and same was restored, but the defendant shamelessly accepted the costs of Rs.1,500/- from her and she was paid the said amount by begging with her well wishers for complying the payments of costs. In the meantime, the defendant No.1 made proposal for compromise the matter and same was referred to Lok-Adalat, but the matter could not be solved. Moreover,



the matter is postponed for hearing on the indigent petition filed by her for last 06 years and she was already about 80 years old woman and she was sure that she will not survive to see the disposal of this case as submitted already. The defendant NO.1 is exclusively enjoying the entire income of the suit property without providing anything to her for basis necessities. Hence, sought for allow the application.

4. On the other hand, the defendant No.1/respondent filed detailed objection contending that the application is not maintainable in the eye of law. It is further contended that the petitioner is not admitting that the respondent is adoption son of her deceased husband and then according to her when there is no relationship between petitioner and respondent, how she can claim maintenance from the respondent. The petitioner further does not stated that on what capacity, the respondent NO.1 is in possession of the suit property and she could not



admitted that the respondent is adoption son and even, she has stated that the respondent No.1 is in possession of the suit property as adoptive son and is deriving income form the suit land, then she could have claimed maintenance out of the alleged agricultural income from the respondent. It is further contended that the petitioner has not made out as to what is the expenses and income of the suit lands after deducting the maintenance expenses pertaining to the suit schedule property and therefore, the respondent NO.1is not liable to pay any maintenance to the petitioner and there is no income from it as this area is a drought hit area and the agriculture is in loss and in very poor condition. Hence, on these grounds prayed for dismissal of the application with costs.

5. Heard both side and perused the case records.

6. Now, the following points arise for my consideration:-



POINTS

1) *Whether the petitioner has made out sufficient grounds to allow her application?*

2) *What order?*

7. My findings on the above points are:

POINT No.1 : In the negative.

POINT No.2 : As per the final order for the following:

REASONS

8. **POINT NO.1**: It is pertinent to note that the petitioner has filed this petition under order 33 Rule 1 of CPC, permit to her to file this suit as indigent person and also declaration and permanent injunction against the respondents.

9. When the matter was posted for hearing on IA No.3 filed under order 1 Rule 10(2) of CPC, the petitioner come up with the present application seeking interim maintenance against the respondent



NO.1 for Rs.10,000/- per month during the pendent lite.

10. On perusal of the application and objection filed by the both parties, it is undisputed fact that the Misc. Petition filed in Misc.No.6/2021 is restored by this court on 02-11-2022 and it is also undisputed fact that the petitioner has denied the relationship of herself and defendant No.1 and 2 and also she denied that the adoption of respondent No.1 by her husband Ramrao Kulkarni and also she denied that the respondent No.2 is not legally wedded wife of her husband Ramrao Kulkarni and even she has filed the suit for declaration declaring that she is absolute owner of the suit schedule property and declaring that the adoption of defendant No.1 is illegal and she sought for injunction against the defendants from alienating the suit property and also directed the defendants to hand over the vacate the possession of



the suit property to her by dispossessing them or claiming any person through them.

11. So, looking to the entire contention of the petitioner, it is clear that though she was legally wedded wife of her husband Ramrao Kulkarni, but she has denied the adoption of defendant No.1 by her husband Ramrao Kulkarni. Even though, she has stated in her application and plaint that the respondent No.1 is exclusively enjoying the suit property without paying single paise towards her maintenance, but in her evidence, she clearly admitted that,

" ನನ್ನ ಗಂಡನ ಆಸ್ತಿ ಸುಮಾರು 14 ಎಕರೆ ಜಮೀನು ಇರುತ್ತದೆ. ಅದರಲ್ಲಿ 9 ಎಕರೆ ನೀರಾವರಿ ಜಮೀನು ಇರುತ್ತದೆ. ಉಳಿದ ಜಮೀನು ಒಣಬೇಸಾಯ ಇದೆ ಎಂದು ನುಡಿಯುತ್ತಾರೆ. ಸದರಿ ನೀರಾವರಿ ಜಮೀನಿನಲ್ಲಿ ಕಬ್ಬು ಬೆಳೆ ಬೆಳೆಯುತ್ತೆವೆ ಎಂದರೆ ಸರಿ. ನಾನು ಅರ್ಜಿಯಲ್ಲಿ ದಾವಾ ಸ್ವತ್ತಿನ ಕಬ್ಬಿಯಲ್ಲಿ ಇರುತ್ತೇನೆಂದು ಹೇಳಿರುತ್ತೇನೆಂದರೆ ಸರಿ."



12. So, looking in to the above admission she has clearly admitted that she was in possession of the suit schedule property and same has been stated in her petition. When she was in possession of the suit property and growing sugarcane crops, then she is not entitled for any maintenance amount from the respondent No.1, because she denied the relationship of herself and defendant No.1 and .2. Moreover, she denied the adoption of defendant No.1 by her husband. So, until conclusion of trial in Misc. Petition i.e. (indigent application) and until completion of trial in original suit, it cannot be held that the respondent No,1 is liable to pay the maintenance to the petitioner.

13. Moreover, the petitioner has not produced any single scrap of documents to show about the income source of the suit schedule property by the respondent No.1 and even, she has admitted that she was in possession and enjoyment of the suit property



and same has been stated in her petition. When she was in possession of the suit property, then she is not entitled for any maintenance amount from the respondent No.1/defendant No.1. Hence, in view of the above discussion and reason assigned by me, the petitioner has not made out grounds to allow her application. Accordingly, I answer **point No.1 negative.**

14. **POINT No.2**:- In view of the above result, I proceed to pass the following :

ORDER

IA No.4 filed by the petitioner
U/O., 151 of CPC, is hereby rejected.
No order as to costs.

For: hearing on IA No.3 filed
U/O., 1 Rule 10 of CPC, by the
applicant Dhondopanth S/o Baburao
Kulkarni.



(Order is dictated to stenographer, transcribed by her, corrected by me and pronounced by me in the open court on this 15th day of December 2023).

(S.M. ARUTAGI)
Senior Civil Judge,
Aland

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