

ORDER ON I.A.

The instant I.A. is filed by the petitioner under Section 151 of C.P.C. seeking handing over of possession of the land bearing Sy.No.49/5 measuring 3-acres 34-guntas situated at village Ningadalli for the yearly cultivation of the said land by the petitioner on the reasonable terms and conditions imposed by the Hon'ble Court in the interest of justice.

In the affidavit, it is stated that the respondent No.1 who was manager of the family has expired and his LR's are already on record. As per the order dated: 31.03.2021 this court was pleased to order for auction of yearly cultivation of the land bearing Sy.No.49/5 measuring 3 acres 34 guntas situated at Ningadalli village, Tq: Aland by the tahasildar, Aland the said order is not yet modified or altered till this day. The Tahasildar, Aland has filed a report stating that due to the digging of pits in the said land nobody is coming forward for yearly cultivation of the said land. The respondent is ready to manually cultivate

the said land and will provide true account of the annual yield, this is the only way available for the deponent to recover the arrears of the maintenance. The deponent is also ready to abide by any terms and conditions that will be imposed by this court in the event of allowing of this petition. Hence, prays to allow the application.

On the other hand, the counsel for respondent has filed objections to the said I.A. and contended that the petition filed by the petitioner is not maintainable in the eye of law. Further contended that there is no provision in the D.V. Act in respect of handing over possession of the land for yearly cultivation of the land by the petitioner. Further proceedings of the present petition is stayed by the Hon'ble court on 20.04.2022 in O.S.No.74/2022 on the file of this Hon'ble Court. Moreover, the daughter of late Vithal has filed suit for partition and separate possession against her mother Ambawwa and the present petitioner in O.S.No.74/2022 on the file of this court.

Further contended that the Vithal died intestate living behind the petitioner, daughter Laxmibai and wife Ambawwa. The petitioner, Laxmibai and Ambawwa are in joint possession of land bearing Sy.No.49/5 measuring 3 acres 34 guntas. The petitioner, Laxmibai and Ambawwa are co-owners and co-possessor. One Co-owner cannot be claim possession of the said land from another co-owner until it is divided as per law. Therefore, when the matter is posted for hearing, the petitioner has filed the said petition. Hence, prays to rejection of the said application.

Counsel for petitioner has relied on Civil Revision Petition No.115/1998 and 1482/2001.

Heard and perused the materials on record. On perusal it reveals that the present petition has filed for recovery of maintenance as per order passed in Crl.Misc.483/2024. It is important to note that earlier this court passed order for auction the property for yearly cultivation and with direction to

deposit the auction amount in the court, but the tahasildar filed the report stating that the said land is not cultivable land, since there are pits in the land but, now the petitioner filed the present application for handing over of the possession of the property for manual cultivation. It is also important to note that as per the documents relied by the respondents, it reveals that there are Civil Cases pending with respect to the same property for partition and in the written statement filed by the respondent, it reveals that the both parties are in joint possession of the property. And as per the law the property which is in joint possession of the family members without partition then all the parties are in possession of the said property jointly. Unless and until it is divided by the partition. I have gone through the decisions relied by the counsel for petitioner, it reveals that the ratio laid down in those cases with respect to setting aside exparte order passed in proceedings under section 125 Cr.P.C. and Hon'ble court also held that there is no specific provision and the justice demands, there is inheritance

power of the court and the case should be restored and justice could not be denied to the wife and children but, in the present case already there are civil cases pending with respect to same property and the question of handing over the possession of the property at this stage is not proper and it is also important to note that the remedy lies to the petitioner before the civil court for possession of the property. Hence, the application filed by the petitioner is not maintainable at this stage. Hence same is rejected accordingly.

Call on

**Addl.Civil Judge & JMFC
Aland**