



**IN THE COURT OF CIVIL JUDGE & J.M.F.C.,
CHITTAPUR**

Present

SRI. ABHISHEK RAMACHANDRA JOSHI

B.A.L., LL.B.,

***Civil Judge & JMFC,
Chittapur***

O.S.No.98/2010

DATED: THIS THE 12th DAY OF MARCH-2026

PLAINTIFF:

1. **Bibanbee W/o Mehaboobsab,**
Age: 65 years, Occ: Agriculture and Household,
R/o: Asar Mohalla, Chittapur, Tq. Chittapur.
**(Since deceased through legal
representative)**
 - (a) **Mohammed Mashak S/o Mehaboobsab,**
Age: 60 years, Occ: Agriculture,
R/o: Asar Mohalla, Chittapur, Tq. Chittapur.
Now at Hyderabad.
 - (b) **Mohammed Hussain s/o Mehaboobsab,**
Age: 72 years, Occ: Private work,
R/o: Asar Mohalla, Chittapur,
Tq. Chittapu Now at Hyderabad.
2. **Habeebee W/o Cousamat,**
Age: 67 years, Occ: Household,
R/o: Near Police Station, Chittapur.
3. **Allibaba S/o Allauddin,**
Age: 40 years, Occ: Coolie,
R/o Near Railway Station, Wadi, Tq. Chittapur.

-V/s-

**DEFENDANTS:**

- 1) Mehaboob S/o Ahmedali Sab,
Age: 60 years, Occ: Agriculture,
R/o Diggaon, Now at Sindnoor,
Dist. Raichur.
(Since deceased through legal representative)
 - (a) Sulekhabegum W/o Late. Mehaboob,
Age: 55 years, Occ: Household,
 - (b) Ahmed Pasha S/o Late. Mehaboob,
Age: 38 years, Occ: Coolie,
 - (c) Munavar Begum D/o Late. Mehaboob,
Age: 40 years, Occ: Coolie,
 - (d) Parveen Begum D/o Late. Mehaboob,
Age: 34 years, Occ: Coolie,
 - (e) Jaffat Paxha S/o Late. Mehaboob,
Age: 36 years, Occ: Coolie,
All R/o: Badi Base, Sindnoor,
Tq & Dist. Raichur.
- 2) Siddamma W/o Basavraj Nanjundi,
Age: 35 years, Occ: Agriculture,
R/o Diggaon, Tq. Chittapur,
Dist. Gulbarga.
(Since deceased through legal representative)
 - (a) Basavaraj S/o Shankrappa Nanjundi,
Age: 71 years, Occ: Agriculture,
R/o: Diggaon village, Tq.Chittapur.
Dist. Kalaburagi.
 - (b) Vishweshwar S/o Basavaraj,
Age: 42 years, Occ: Agriculture,
R/o: R/o: Diggaon village,
Tq.Chittapur, Dist. Kalaburagi.



(c) Sumangala D/o Basavaraj (W/o Vikram Patil),
Age:38 years, Occ: Agriculture,
R/o: R/o: Diggaon village,
Tq.Chittapur, Dist. Kalaburagi.

PARTIES TO I.A. No.IX

APPLICANT/Defendants:

Siddamma W/o Basavraj Nanjundi,
Age: 35 years, Occ: Agriculture,
R/o Diggaon, Tq. Chittapur,
Dist. Gulbarga.

(Since deceased through legal representative)

- (a) Basavaraj S/o Shankrappa Nanjundi,
Age: 71 years, Occ: Agriculture,
R/o: Diggaon village, Tq.Chittapur.
Dist. Kalaburagi.
- (b) Vishweshwar S/o Basavaraj,
Age: 42 years, Occ: Agriculture,
R/o: R/o: Diggaon village,
Tq.Chittapur, Dist. Kalaburagi.
- (c) Sumangala D/o Basavaraj (W/o Vikram Patil),
Age:38 years, Occ: Agriculture,
R/o: R/o: Diggaon village,
Tq.Chittapur, Dist. Kalaburagi.

(By Sri. B.M.P., Advocate)

-V/s-

OPPONENTS/Plaintiffs:

Siddamma W/o Basavraj Nanjundi,



Age: 35 years, Occ: Agriculture,
R/o Diggaon, Tq. Chittapur,
Dist. Gulbarga.

(Since deceased through legal representative)

- (a) Basavaraj S/o Shankrappa Nanjundi,
Age: 71 years, Occ: Agriculture,
R/o: Diggaon village, Tq.Chittapur.
Dist. Kalaburagi.
- (b) Vishweshwar S/o Basavaraj,
Age: 42 years, Occ: Agriculture,
R/o: R/o: Diggaon village,
Tq.Chittapur, Dist. Kalaburagi.
- (c) Sumangala D/o Basavaraj (W/o
Vikram Patil),
Age:38 years, Occ: Agriculture,
R/o: R/o: Diggaon village,
Tq.Chittapur, Dist. Kalaburagi.

(By Sri. M.S.S. Advocate.,)

ORDER ON I.A.IX FILED UNDER

SECTION. 144 R/w 151 of IPC

The present application is filed by defendant No.2 seeking for order of restitution of possession of suit property in favour of defendant No.2 by directing the plaintiffs to handover possession of suit property.

2. In the present application, it is contended by defendant No.2 that, due to communication gap and due



to lockdown, he could not contact his counsel about passing of judgment and decree in OS No. 98/2010. Thereafter the plaintiffs have filed execution petition and got delivery of possession of suit property. In the meantime, defendant No.2 has preferred appeal in RA No. 6/2022 and the same is allowed on 10-11-2023. As per the order of the appellate court, the judgment and decree passed by this court was set-aside and matter was remanded for fresh disposal. As the judgment and decree based on which the plaintiffs have taken possession of suit property is set-aside, it is necessary that, the possession taken by plaintiffs from defendant No.2 has to be restituted. Hence, defendant No.2 is seeking for orders from this court for restitution of possession of suit property.

3. Per contra, advocate for plaintiff has filed objection to the present application. In the objection it is contended by plaintiff that, the matter is remanded back for limited purpose of giving opportunity to defendant No.2 to cross-examine PW-2 and lead evidence. The appeal filed and disposed off at RA No. 6/2022 has not varied or reverse the judgement of this court. Hence, the present application is not maintainable. Further it is contended that, the defendant No.2 cannot file any



application U/s 144 of CPC in this case and the defendant No.2 should have filed separate miscellaneous case. Accordingly, plaintiff sought for dismissing the present application.

4. Heard both sides.

5. The points would arise for courts consideration are as under:-

1. Whether defendant No.2 has made out sufficient ground to allow the present application?

2. What order ?

6. My findings on the above points are as under:

Point No.1 : In the affirmative.

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

REASONS

7. **Point No.1** :- Defendant No.2 has filed the present application seeking for restitution of possession of suit property from plaintiffs. After filing the present application defendant No.2 has expired and his LRs are brought on record as defendant No.2(a) to 2(c). The



present application is objected by the plaintiffs by filing their objection.

7.1 The advocate for defendant NO.2(a) to 2(c) during his course of arguments, submitted that, as per the judgment passed in RA No. 6/2022, the judgment and decree passed by this court is set-aside and it is remanded back for fresh disposal. The plaintiffs on the basis of judgment and decree passed by this court had filed EX. Petition No. 8/2019. In the said petition this court had ordered for delivery of possession and accordingly possession is also delivered. Now as per the orders passed in RA NO. 6/2022, the judgement and decre passed by this court is set-aside and remanded back for fresh disposal. Hence, as per the provisions of Sec. 144 of CPC, the possession taken by the plaintiffs has to be restituted to the defendant No.2(a) to 2(c). Advocate for defendant No.2(a) to 2(c) relied upon the following citations.

1. Hon'ble Supreme Court of India Bhikchand S/o Dhondiram Mutha (Deceased) Vs. Shamabai Dhanraj Gugale. Civil Appeal No. 5026 of 2023 dated May 14 2024.



2. Hon'ble Supreme Court of India Binayak Swain Vs Ramesh Chandra Panigrahi And another (AIR 1966 SC 948)
3. Hon'ble Supreme Court of India.
South Eastern Coalfields Ltd., Vs State of M.P. and Others. (AIR 2003 SC 4482)
4. Hon'ble High Court of Karnataka, Smt. Shakunthala S. Rao And Karikal Anjaneya Temple. WP No.12635/2024, dated 27-06-2024

7.2 Advocate for plaintiffs in their arguments submitted that, they have already preferred appeal before Hon'ble High Court of Karnataka against the orders passed in RA No. 6/2022. In the orders passed in RA No. 6/2022, the judgment passed by this court is not varied or set-aside on merits. Hence, the application is not maintainable. Further it is argued that, the defendant No.2 cannot file the present application in this case and he ought to have filed separate civil Misc. case. Hence, on these grounds, advocate for plaintiffs sought for dismissing the present application.

8. I have carefully perused the materials available on record. Sec. 144 of CPC deals with application for restitution. As per the provision the ingredients required



for entertaining any application for restitution is as under:

- 1) Restitution sought must be in respect of the decree or order which had been varied or reversed.
- 2) A party applying for restitution must be entitled to benefit under the reversed decree or order.
- 3) The relief claimed must be consequential to the reversal or variation of decree or order.

8.1 Hence, based on the provisions of law if on the basis of reversed or reviewed judgment if any person has come in possession of any property or as got any benefit out of it, the person who has benefited has to retribute the benefit received by him. In the present case also, the plaintiffs on the basis of decree passed in OS No. 98/2010 had filed execution petition NO. 9/2017 and in that case possession of suit property was handed over. Subsequently as per the orders passed in RA No. 6/2022, the judgment passed by this court was set-aside and was remanded for fresh adjudication. Even though the advocate for plaintiffs submitted that, the judgment passed by this court is not set-aside, but on the perusal of orders passed by Hon'ble Senior Civil Judge Chittapur in RA NO. 6/2022, it is clear that, the judgment passed



by this court is set-aside. Hence, the contention taken by the plaintiffs is not acceptable.

8.2 With regard to defendant No.2 filing the present application, plaintiffs had taken specific contention that, defendant No.2 ought to have filed separate miscellaneous petition and application in present suit is not maintainable. However, the Hon'ble Apex Court in catena of decisions has clearly held that, the application for restitution has to be filed in the case in which possession of suit property was handed over to other party. Hence, such contention of the plaintiffs is also not maintainable.

8.3 The object of restitution is to bring parties to the suit on the same footing which they were when suit was filed. Any party cannot enrich himself on the basis of wrong decision of any court. In this case also the Hon'ble Senior Civil Judge Chittapur in RA No. 6/2022, had held that, the judgement passed by this court is wrong and the judgement is set-aside. On the basis of such judgment, plaintiffs cannot be enriched. Hence, it is fit case in which restitution has to be ordered. Accordingly, IA NO.IX filed by defendant No.2 has to be allowed. Thus I answer point No.1 in the affirmative.



13. **Point No.2:** In view of the discussion made above I proceed to pass the following:

ORDER

I.A.No.IX filed by the defendant No.2 U/s 144 R/w 151 of CPC is hereby allowed.

Plaintiffs are hereby directed to handover possession of suit property which is obtained by them in execution petition No. 8/2019 to defendant No.2(a) to 2(c), within 3 months from this order.

No order as to the costs.

(Dictated to the Typist-Copyist directly over the computer and typed by him, corrected, signed and then pronounced by me in the Open Court on this the 12^h day of March-2026)

(ABHISHEK RAMACHANDRA JOSHI)
Civil Judge & JMFC, Chittapur.