

**IN THE COURT OF SENIOR CIVIL JUDGE &
JMFC, AT KUSHTAGI.**

**PRESENT:-SHRI.B.S.HONNASWAMY
B.A., L.L.M.**

DATED THIS THE 09th DAY OF AUGUST - 2021

O.S. No.860/2016

Applicant/Plaintiffs:-

Gavisiddappa S/o GuruSiddappa
Hulabanni @ Patansetty, Age:63 years,
Occ:Retired employee, R/o Gangavathi
Tq:Gangavathi, Dist:Koppal and
another.

(By Sri.B.B., Advocate)

- Versus -

Respondent/Defendants:-

Mallappa @ Mallikarjuna S/o
Karibasappa, Hulabanni @ Patansetty,
Age:47 years, Occ:Business, R/o Near
4th cross first main, Sathyanarayan
pete, Tq:Gangavathi, DistKoppal and
two others.

- (D-1 By Sri.B.M.D., Advocate)

Order On I.A. – VII

The plaintiff counsel filed I.A. No.VII U/s.151
of C.P.C. to set aside the order passed by this court
on 22.10.2019 regarding issue No.8 treated as

Preliminary issue. And to decide the issue No.8
along with other issues.

2. plaintiff filed affidavit stating that :-

The plaintiffs filed suit for declaration and injunction and rectification of records against the defendants. The suit property is ancestral property and it is allotted to their father GuruSiddappa. He has already examined as PW-1 and this court framed issues and treated issue No.8 as preliminary issues 'Whether the defendant proves that this court having no jurisdiction to try this suit as per Sec.133 of KLR Act on 22.10.2019 it is mixed question of law and prays to try the said issue No.8 along with other issues. The defendants taken contention in their written statement regarding their order of land tribunal and order in writ petition No.WP. No.31199/2013 and judgment in O.S. No.322/5 but the plaintiff father is not a party to the proceedings. Hence he prays to allow this application.

3. The defendants filed objection on IA-7 stating that, This court has framed issues long back on 22.10.2019 issue No.8 treated as preliminary issues based on that the defendants gave evidence on 17.12.2019 and the plaintiff are watching the proceedings since beginning and matter was posted

for cross examination of DW-1 from 25.08.2020, 05.11.2020, 20.11.2020, and 21.11.2020, 11.02.2021, 22.01.2021 and lastly on 05.02.2021 thereafter IA-7 is filed and only to prolong the matter for one or the other reason IA-7 is filed and prays to dismiss the application.

4. Heard arguments both the sides the points that arise for my consideration:

1. Whether the I.A. No.VII deserved to allowed?
2. What order?

5. My answer to above point are

Point No. 1 : In the negative.

Point No. 2 : As per the final Order following

-: Reasons :-

6. Points No.1:- The defendant taken contention in written statement that, this court having no jurisdiction to try this suit as per section 133 of KLR Act it is burden upon the defendants prove the issue No.8 defendant lead evidence and marked Ex.D-1 to Ex.D-4 and posted for cross of DW-1 inspite of granting sufficient time the plaintiff counsel did not cross examined the DW-1 and filed the present IA No.7, I carefully peruse the suit records on perusal of Ex.D-1 Sharanappa filed suit

for declaration and injunction against Mallikarjuna and others Ex.D-2 is the written statement filed by the written statement denying the plaint averments stating that there is a order of Hon'ble High Court in WP 31199/2013 which is dismissed by the Hon'ble High Court of Karnataka in O.S. No.322/2015 issues were framed and issue No.4 burden is upon the plaintiff that suit is maintainable in view of decision passed by the land tribunal and the order of the High court in writ petition 31199/2013 Ex.D-4 is the orders in O.S. No.322/2015 on preliminary issue No.4 after hearing both sides this court was dismissed the suit as it is barred U/sec.133 of the Karnataka Land Reforms Act Accordingly the suit is dismissed the plaintiff preferred writ petition 2544/2006 before the Hon'ble High Court of Karnataka Dharwad bench the Hon'ble High Court of Karnataka was please to dismiss the said writ Petition dated:22.08.2013. The petitioner preferred writ appeal 31199/2013 before the circuit bench Dhrarwad the Hon'ble Appellate court after hearing both sides the said Writ appeal is also dismissed by knowing all these facts the plaintiff has filed suit for declaration and injunction which is barred under Sec.133 of KLR Act. I do not find any ground for

allowing on IA-7 the plaintiff counsel did not come forward to cross examined the DW-1 inspite of granting sufficient time. Hence IA-7 deserves to be dismissed. Hence I answer point No.1 in the negative.

7. Point No.2 :- For the Above said reason and discussions point No. 1, proceed pass the following order on I.A.-VII:-

ORDER

The I.A. No.VII filed by the plaintiff is hereby dismissed with cost of Rs.100/-. Ultimately the suit is not maintainable.

Hearing on maintainability of suit, Call on 16.08.2021.

(Dictated to the Steno., directly on computer system, typed by him, corrected, initialed by me and then pronounced, in the home office, on this day of 09th August -2021).

(B.S HONNASWAMY)

Senior Civil Judge, Kushtagi.