

**IN THE COURT OF THE ADDL. CIVIL JUDGE &
JMFC., AT T.NARASIPURA**

Present : **Sri. Venkatesha.K.N.,** ^{B.A. LL.B.}
Addl. Civil Judge & J.M.F.C.,
T.Narasipura.

Dated : **This the 06th day of November, 2024.**

O.S./104/2023

Plaintiff : Sri.Mahadevappa,
S/o Late Siddalingappa,
Aged about 68 years,
R/at Menasikyathanahalli
Village, Bannur Hobli,
T.Narasipura Taluk,
Mysuru District.

(Represented by : Sri.S.C.S, Advocate.)

-V/S-

Defendants : 1. Smt.Sundramma,
W/o Mahadevappa,
Aged about 65 years,
R/at No.355, 7th Cross,
Vinayaka Extension,
Nagarabavi, Bengaluru-72.

2. Smt.Rajamma,
W/o Late Nagaraju,
Aged about 42 years,
R/at Yadadore Village,
Kasaba Hobli,
T.Narasipura Taluk.

3. Sri.Shivakumara,
S/o Siddappa,
Aged about 40 years,

R/at B.G Pura Village,
Malavalli Taluk,
Mandya District.

4. Smt.Pavithra,
W/o Prakash,
Aged about 35 years,
R/at Channabasavaiahnahundi
Village, Talakadu Hobli,
T.Narasipura Taluk.

(Represented by : Sri.L.S., Advocate.)

Parties to I.A. No.IV

Applicant/ : Smt.Sundramma.
Defendant No.1

-V/S-

Opponent/ : Sri.Mahadevappa.
Plaintiff

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**ORDERS ON I.A.NO.IV UNDER ORDER XL, RULE 1 OF
C.P.C**

This is the I.A.No.IV filed by the applicant/defendant No.1 under Order XL, Rule 1 of C.P.C., seeking to appointment of a Tahasildar, T.Narasipura has receiver for the standing crop sugarcane grown in the item No.2 to 4 of the suit schedule properties and to harvest the crop, sell the crop and the amount received to be deposited to the court.

2. In I.A.No.IV, it is stated that for the reasons stated in the affidavit, the plaintiff has made the false claim on item

No.1 to 3 of the suit schedule properties. Father of the defendant No.1 has executed the gift deed and gifted the item No.1 & 2 of the suit schedule properties in favour defendant No.1. Further stated that, she is the actual possession of the schedule properties. The defendant No.1 has purchased the item No.3 of the suit schedule property under registered Sale Deed and hence, item No.3 of the suit schedule property is her self acquired property. Further stated that, the plaintiff has falsely filed this suit claiming 1/3rd share in item No.1 to 4 of the suit schedule properties, in fact the plaintiff is entitled for only 1/3rd share in the item No.4 of the suit schedule property. The plaintiff is fully aware that item No.1 to 3 of the suit schedule properties are all exclusive properties of defendant No.1. The plaintiff and defendants have grown sugar cane crop in item No.2 to 4 of the suit schedule properties. The crop will be ripped in another 2 months. Since the plaintiff is having crooked and evil thoughts against the defendants, they have apprehend that the plaintiff intentionally will not give any share to defendants and plaintiff will allow all the crop top himself. If the application is allowed no hardship and injury will be caused to the plaintiff. If the application is not allowed more hardship and injury will be caused to the defendants. Hence the balance of convenience lies in their favour. Hence, prayed to allow the I.A.No.IV.

3. On the other hand, the learned counsel for opponent/ plaintiff has filed objections to the above application and

contended that, the application filed by the defendant No.1 is not maintainable either in law or on facts. The item No.1 & 2 suit schedule properties are not the gifted properties of the defendant No.1 and she has not been in possession of the suit schedule properties. By suppressing the material facts the defendants have filed the present application and they have not come to the court with clean hands. Hence, prays to dismiss the above application with exemplary costs.

4. Heard on both sides and perused the materials.

5. Now the only points that will arise for my consideration are:-

1. Whether the applicant/defendant No.1 has made out sufficient grounds to appoint a Tahasildar, T.Narasipura as receiver as prayed in the I.A.No.IV?

2. What Order?

6. My answers to the above points are:-

Point No.1 : In the **Negative**.

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

:: R E A S O N S ::

7. **Point No.1:-** In this case, I have completely gone through the entire suit file. This is the suit filed by the plaintiff for the relief of partition and separate possession. In this case, after institution of the suit, the suit summons issued to the defendants. The defendants appeared through

their counsel and filed their written statement. The applicant/defendant No.1 has come up with this I.A.No.IV seeking appointment of Tahasildar, T.Narasipura as receiver.

8. In the I.A.No.IV, it is stated that for the reasons stated in the affidavit, prayed to appoint a Tahasildar, T.Narasipura as receiver for the standing crop of sugarcane grown in the item No.2 to 4 of the suit schedule properties and to harvest the crop, sell the crop and the amount received to be deposited to the court. In the accompanying affidavit it is also stated that, Item No.1 to 3 of the suit schedule properties are the self acquired and absolute properties of defendant No.1. Further stated that, the plaintiff and defendants have grown sugar cane crop in item No.2 to 4 of the suit schedule properties. The crop will be ripped in another 2 months. Since the plaintiff is having crooked and evil thoughts against the defendants, the defendants apprehend that the plaintiff intentionally will not give any share to defendants and plaintiff will allow all the crop top himself. Hence, the present I.A. is to be necessary. Otherwise, the defendants will be put to inconvenience. Accordingly, prayed to allow the I.A.No.IV.

9. I have also gone through the U/O.XL R. 1 of C.P.C. which reads as under:-

"Order 40, Rule 1, Appointment of Receivers-- (1) Where it appears to the Court to be just and convenient, the Court may by order.

(a) appoint a receiver of any property whether before or after decree;

10. After careful scrutiny of the contents of I.A.No.IV and also after hearing on both sides on I.A.No.IV, I am of the opinion that, Order 40, Rule 1, C. P. C. empowers the Court to appoint a receiver when it is just and convenient. It has not prescribed any criteria for the purpose of appointment of receiver. The Court can appoint receiver whenever it appears to the Court to be just and convenient. In a suit for partition, it is immaterial whether the application is made by the co-owners or by a stranger. If the question is brought before the Court, it is for the Court to consider whether it is just and convenient to appoint a receiver. The appointment of receiver is conceived for the purpose of management of a property and saving it from being wasted or dissipated, protecting the interest of the respective parties. If it is necessary for the purpose of protecting the interest of the respective parties, if there are materials before the Court to come to the conclusion that it is just and convenient, the Court has every right to appoint a receiver.

11. In the present case, the defendant No.1 has contended in the one breath that, Item No.1 to 3 of the suit schedule properties are her absolute properties. In another breath she has contended that, plaintiff and defendants have grown the sugar cane crop in the item No.2 to 4 of the suit schedule properties. But in order to prove the said contentions the defendant No.1 has not produced any

document. Further the defendant No.1 has not produced any documents in respect of growing of sugar cane in the suit schedule properties. Hence in the absence of proper materials the contention of defendant No.1 is not believable.

12. Further the duty of the court to be very cautious in allowing an application for appointment of a receiver in a case where the joint family members are in actual possession of the property. In such a case it has to require special reasons to be proved for interfering with such possession. At the same time the court has to bear in mind that this is a remedy which may be the only remedy open to a parties for the maintenance and preservation of the property in suit. It is true that a court will require a party to show a very strong case of title and his right to possession as also that the property is in danger of being wasted. In the present case the khatha of the item No.1 to 3 of the suit schedule properties have been standing in the name of defendant No.1. But the defendant No.1 has contended that, plaintiff and defendants have grown the sugar cane crops in the suit schedule properties. Further the defendant No.1 has been residing in Bengaluru. Hence question of cultivation of the suit schedule property by defendant No.1 is doubtful. Further admittedly the suit schedule properties are agriculture properties. Further the parties always depending upon the income of agriculture for their livelihood. If the receiver is appointed for standing crops it will certainly effect the livelihood of the parties. Further generally the farmers also depending upon

the agriculture income for development of agriculture lands for future crops. Moreover the parties having liberty to claim mesne profits in the suit schedule properties. Hence at this stage it is not proper to appoint a receiver for the standing sugar cane crops. Moreover the defendant No.1 has not produced any document to show that, they have growing the sugar cane in the suit schedule properties.

13. Now, generally speaking, in a partition suit between members of a joint family the Court will not appoint a Receiver except by consent, and especially where the family property consists of land. So in order that a Receiver should be appointed of joint family property in a partition suit, special circumstances will have to be proved before the Court will be entitled to appoint a Receiver. Generally speaking, when an application is made to the Court to take the property into its hands by appointing a Receiver, the party must prove that prima facie he has a very excellent chance of succeeding in establishing the case made out in his plaint or written statement, and in the next place he must satisfy the Court that the property in possession of the opposite party is in danger of being wasted. With regard to the property in this suit it appears that a considerable amount is immovable property, and the defendant's share would be ample security for any claim which the plaintiff would be able to substantiate in the case for damages, or under any other cause of action against the defendants. Then the defendant No.1 alleges that item No.1 to 3 of the suit schedule properties are her absolute

properties and plaintiff is not having any right or share in the said properties. But the plaintiff alleges that, suit schedule properties are the ancestral joint family properties of plaintiff and defendants. Hence, the contention of both parties required full pledged trial. Therefore, there is a dispute as regards that schedule properties. Further, it is always open to the Court to ask the party in possession to file an inventory and to keep accounts. There are no materials from which I can form any certain opinion that a Receiver should be appointed. Further in any event those properties are still in dispute, and the same reasons, which I have shown are applicable to the question whether a Receiver should be appointed of the land, apply with regard to standing crops. All these questions will be determined when the suit comes on for hearing, and then the Court will be in a much better position to form an opinion as to whether the Court should take possession of the property until the dispute is finally decided. Hence at this stage the Court is not having sufficient grounds for taking the properties into its own possession and depriving the parties of possession of the properties. Therefore, in this case it is pertinent to note that, the plaintiff has filed this suit for the relief of partition and separate possession and the evidence has not yet commenced. If this I.A. is allowed and Tahasildar, T.Narasipura is appointed as receiver for the alleged standing sugar cane crop, the great hardship will be caused to the opponent/plaintiff. Therefore, the applicant/defendant No.1 has not made out sufficient

grounds to allow the I.A.No.IV. Accordingly, Point No.1 is answered in the '**Negative**'.

14. **Point No.2:-** In the light of the above discussion, I proceed to pass the following:-

:: O R D E R ::

I.A.No.IV filed by the applicant/defendant No.1 under Order XL Rule 1 of C.P.C., is hereby **Rejected.**

[Fed to the computer to my dictation by the stenographer after verified by me, print taken by her and after signed by me, pronounced in the open Court dated this the 06th day of November, 2024.]

**(Venkatesha.K.N.)
Addl. Civil Judge & J.M.F.C.,
T.Narasipura.**

(Order pronounced in the open Court, vide separate order.)

ORDER

I.A.No.IV filed by the applicant/defendant No.1 under Order XL Rule 1 of C.P.C., is hereby **Rejected.**

For orders on I.A.No.V.

Kept by.

**Addl. Civil Judge & J.M.F.C.,
T.Narasipura.**

ORDERS ON I.A.No.V.

This is the I.A.No.V is filed by the applicants/proposed defendants under Order 1 Rule 10(2) R/w Section 151 of C.P.C., seeking to implead the applicants as additional defendant No.5 to 7 in the above suit.

2. In this I.A.No.V, it is stated that, the above suit has filed for the relief of Partition and Separate Possession in respect of suit schedule properties. The suit schedule properties are the ancestral and joint family properties of the plaintiff and defendants. The plaintiff has mentioned their mother name in the plaint genealogical tree as Shylaja, who is

died leaving behind the children i.e., proposed defendants as her legal heirs and she is also having right in the suit schedule properties. Further stated that, their mother by name Shylaja was died leaving behind the children i.e., proposed defendants as her legal heirs. Hence the proposed defendants are having share in the suit schedule properties. Therefore, the proposed defendant No.5 to 7 are the necessary parties to the above suit. Hence, prayed to allow the above application.

3. On the other hand, learned counsel for the plaintiff has not filed any objection the above said I.A.

4. Heard and perused the materials available on record.

5. The following points arise for my consideration:-

1. Whether the proposed defendant No.5 to 7 are proper and necessary parties to the above suit ?

2. What order ?

6. My findings to the above points are as follows:-

Point No.1 : In the **Affirmative.**

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

REASONS

7. **Point No.1:-** The plaintiff has filed this suit against the defendants for the relief of partition and separate

possession and contended that, the suit schedule properties are the ancestral and joint family properties of the plaintiff and defendants. The plaintiff has mentioned their mother name in the plaint genealogical tree as Shylaja, who is died leaving behind the children i.e., proposed defendants as her legal heirs and she is also having right in the suit schedule properties. Hence, the proposed defendant No.5 to 7 are the necessary parties to the above suit.

8. I have completely gone through the Order I, Rule 10(2) of C.P.C., which reads as under:-

"(2) Court may strike out or add party.-

The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added."

9. As per this provision of law, this Court is having power to strike out or add party in the suit during the pendency of the suit at any stage. In this case it is to be noted that the plaintiff has filed the above suit for the relief of Partition and Separate Possession. In the affidavit filed along with I.A.No.V, it is stated that, the suit schedule properties are the ancestral joint family properties of the plaintiff and defendants. The plaintiff has mentioned their mother name in

the plaint genealogical tree as Shylaja, who is died leaving behind the children i.e., proposed defendants as her legal heirs and she is also having right in the suit schedule properties. Therefore, the proposed defendant No.5 to 7 are the necessary parties to the above suit. But, in a similar case the Court observed that the state which carry for the interest of its people even though it not necessary but to make if the record proper, if any order is passed against them without bringing them as a party in the suit, then the order of this Court cannot be executed. Therefore, it is necessary to pass an order to implead the proposed defendants for the proper adjudication of the case. Order 1 Rule 10 of C.P.C. also shows that, a person may be added as a party whether as a plaintiff or as a defendants when they ought to have been joined as a parties or when their presence is necessary in order to dispose of the suit completely and effectively. In this case, the proposed defendant No.5 to 7 are the necessary parties in order to adjudicate the controversy involved in the suit effectively and completely. Moreover, if the proposed defendant No.5 to 7 are impleaded as a parties, no harm would be caused to other side, rather it helps the effective adjudication. Therefore, this court is of the opinion that the applicants have made out sufficient grounds to allow I.A.No.V. Hence, Point No.1 is answered in the **Affirmative**.

10. **Point No.2:-** In the light of the above discussion, I proceed to pass the following:-

ORDER

I.A.No.V filed by the applicants/proposed defendants under Order 1, Rule 10(2) R/w Section 151 of C.P.C. is hereby **allowed**.

The proposed defendants as mentioned in the I.A.No.V are impleaded as defendant No.5 to 7 to the above suit.

For Amendment and amended plaint.

Call on: 14.11.2024.

**Addl. Civil Judge & J.M.F.C.,
T.Narasipura. ****