



**IN THE COURT OF ADDL. SENIOR CIVIL JUDGE &
JMFC, GUBBI.**

PRESENT

SMT. POORNIMA K. YADAV, B.A.LL.B., LL.M.,

Addl. Sr. Civil Judge & JMFC, Gubbi.

Dated on this the 7th day of July, 2023

ORIGINAL SUIT NO. 60/2020

**Plaintiff/s : Narasimhaswamy M.L
(By Sri. V.K. Adv.)**

Vs.

**Defendant/s : M.P. Lakshmikanth and others
(By Sri. H.L.R.S. Adv.)**

PARTIES TO I.A.NO.VIII

Applicant/Plaintiff : Puspaltha

Vs.

**Opponent/Defendant : A.R. Sowbhagyamma &
others**

: ORDERS ON I.A.NO.8:

When the matter was pending for defendant evidence, the plaintiff filed the present application.



- 2.** The applicant/LR No.1 (a) of the plaintiff filed this application Under order 40 Rule 1 (a) and (d) of CPC seeking for appointment of receiver for management i.e. to sell and deposit the amount arising from usufructs pertaining to suit schedule Item No.1 (4) and 2 (3) properties.
2. As per the plaint schedule Item No.1 (4) property is described as Land bearing Sy.No. 94 measuring 24 guntas situated at Mallarabanavadi village, Kasaba Hobli, Nelamangala Taluk, Bangalore Rural District and Item No.2 (3) property is described as Land bearing Sy.No. 127/2A measuring 39 guntas situated at Mallarabanavadi village, Kasaba Hobli, Nelamangala Taluk, Bangalore Rural District.
- 3.** The application is accompanied with the affidavit of the LR No.1 (a) of the plaintiff, wherein it is stated that her husband filed the present suit seeking for partition and separate possession against his father. It is stated that after filing of the suit her husband died as such, she



and her minor children came on record as the legal representatives of the deceased plaintiff. It is stated that the defendant No.1 also died during the pendency of the suit. Further, stated that the IA Schedule properties are situated at Mallarabnavadi village, Kasaba Hobli, Nelamangala Taluk, Bangalore Rural District and they consist of 1050 arecanut and 20 coconut trees. The usufructs as the said properties is worth Rs. 10,00,000/- per year. It is stated that the defendants are forcibly enjoying the fruits of the IA schedule properties and they are not pleading any account or money towards of the share of the plaintiff. The defendant No.2 and 3 are illegally selling the fruits of the IA schedule properties by giving the properties to others on lease. The plaintiff and her children are deprived from using and enjoying the IA schedule properties. Hence, she sought to allow the application.

4. On the other hand, the counsel for the defendant filed objection and contended that the application is not



maintainable and it is liable to be rejected. It is contended that the matter is pending for defendant evidence and the present application is filed only with an intention to drag on the proceeding. It is contended that the defendants have taken defense about partition in the family and PW1 during her cross-examination admitted that she is in possession and enjoyment of arecanut crops grown in land bearing Sy. No. 127/2A measuring 39 guntas out of it 0.19 ½ guntas. This further contended that land in Sy.No.94 measuring 25 guntas is the self acquired property of the defendant No.1 and same was gifted in favour of the defendant No.3 through registered gift deed dated 20.09.2013. Hence sought to reject the application.

- 5.** Heard the counsel for the plaintiffs and the defendants.
- 6.** Upon hearing both the counsel and on perusal of the materials available on record, the point that arise for my consideration is;



Whether the plaintiffs have shown grounds as just and convenient for appointment of receiver for sale of Item No. 1(4) and 2(3) of the suit schedule properties?

7. My findings to the above point is in the “**Negative**” for the following ;

REASONS

8. Admittedly, the plaintiffs has filed this suit seeking relief of Declaration and share in respect of suit schedule property. The materials on record discloses that after filing of the suit, the matter is contested by the defendants and after completion of the evidence of plaintiff, it is pending for evidence of defendants.
9. The plaintiff sought for appointment of receiver in respect of IA schedule properties stating that the defendant No. 2 and 3 are enjoying the fruits of the said properties without giving any income or crop to the plaintiffs.



- 10.** Order 40 Rule 1 of CPC provides for appointment of receiver when it appears to the court to be just and convenient to appoint the receiver for the purpose of realization, management, protection, preservation, improvement of property, collection of rent and profits. As per, Order 40 Rule (2) of CPC there is mandatory provision that prohibits authorizing the receiver from removing from the possession or custody of property any person whom any party to the suit as no present right so to remove.
- 11.** The very affidavit of the plaintiff No.1 shows that there are yielding crops in the IA schedule properties. Mere enjoyment of the said properties by the defendant No.2 and 3 can not be the ground for appointment of receiver that too sell the IA schedule properties during the pendency of the suit. The prayer sought for the in the application is against the very purpose contemplated under Rule 1 and it goes against the provision of Rule 2. In the said circumstances, this court is of the opinion



that plaintiffs failed to show grounds as just and convenient for appointment of receiver for sale of Item No.1(4) and 2(3) of the suit schedule properties. Accordingly, I proceed to pass the following :

ORDER

*I.A. No.VIII filed by the plaintiffs
Under order 40 Rule 1 (a) and (d) of
CPC is hereby rejected with cost of
Rs. 500/-.*

(Directly dictated to the stenographer on the computer, printed through steno, corrected by me and then pronounced in the open court on this the 07th day of July, 2023)

Sd/-

(POORNIMA. K. YADAV)
Addl. Sr. Civil Judge & JMFC,
Gubbi