



**IN THE COURT OF THE PRL. CIVIL JUDGE & JMFC AT
MADHUGIRI**

Dated this the 09th day of November 2023

: PRESENT :

SRI RAGHUNATHA GOWDA K.T.

B. Com., L.L.B.

**Prl. Civil Judge & JMFC,
Madhugiri.**

O.S. No.402/2021

PLAINTIFF : Sri. Nagaraju @ Nagarajappa
S/o late Gangamma
aged about 55 years
R/o Chinnagiri Palya Village,
Puravara hobli,
Madhugiri Taluk.

(By Sri. KSH., Advocate)

Vs/-

DEFENDANTS: 1. Sri. Govindaraju
S/o Late Venkataravanappa
aged about 55 years
2. Smt. Rathnamma
D/o Late Venkataravanappa
aged about 53 years
R/o Chimpaganahalli village,
Holavanahalli Hobli,
Koratagere Taluk.
3. Smt. Sharadamma
D/o Late Venkataravanappa
aged about 51 years



R/o Sonnenahalli village,
Holavanahalli Hobli,
Koratagere Taluk.

4. Smt. Sakamma
D/o Late Venkataravanappa
aged about 49 years
5. Smt. Susheelamma
D/o Late Venkataravanappa
aged about 43 years
R/o Myliganahalli village,
Manchenahalli Hobli,
Gowribidanuru Taluk.
Chikkaballapura District.
6. Smt. Thimmakka
D/o Late Venkataravanappa
aged about 60 years
R/o Hunasavadi village,
Puravara Hobli,
Madhugiri Taluk.
7. Sri. Giriyappa
S/o Late Venkataravanappa
aged about 56 years
8. Sri. Dasappa
D/o Late Venkataravanappa
aged about 54 years
9. Smt. Lakkamma
D/o Late Venkataravanappa
aged about 50 years
10. Smt. Thimmakka
D/o Late Gangamma & Kariyappa
W/o Late Lingappa
aged about 57 years



11. Smt. Madudakka
W/o Mylarappa
aged about 51 years
12. Sri. Mylarappa
S/o Late Doddamallaiah @ Mallanna
aged about 60 years
13. Smt. Nagamma
D/o C.M. Dharmanna
aged about 56 years
14. Sri. C.M. Dharamanna
S/o Late Doddamallaiah @ Mallanna
aged about 66 years

Defendant No.1, 4 and 7 to 14 are
R/o Chinnagiri Palya Village,
Puravara hobli,
Madhugiri Taluk.

(D-11 to 14 By Sri. BKR., Advocate)
(D-2 to 8 By Sri. SSR., Advocate)
(D-1, 9 & 10 By Exparte)

I.A. No. VI

Applicant : Nagaraju @ Nagarajappa Plaintiff

Vs/-

Opponents : Govindaraju and others Defendants

* * *

**Orders On I.A. No.VI filed by plaintiffs under Order XL
Rule 1(a) (d) and Rule 5 R/w Sec-151 of C.P.C**

This is an application filed by plaintiffs praying this
court to appoint the receiver/court commissioner for the



purpose of plucking the areca nut and coconuts growing in the item No-1 of the suit property for every year and sell the same in public auction in the presence of the both parties and to deposit sale proceeds in the court for disposal of the suit.

2. In the affidavit annexed to the application, plaintiff has stated that he has filed the present suit against the defendants for partition and separate possession of the suit schedule properties. Further he contended that he was in joint possession and enjoyment of the suit property without partition. Further he contended that in item No-1 of the suit property there is areca nut and coconut trees are yielding and defendant No-1 to 10 are colluded with each other misusing the joint family income in the item No-1 of the suit property. It is very necessary to preserve the same for the benefit of successful party in the suit. If equitable order is passed, no injury or injustice will be caused to any of the parties. Hence prayed to allow the application.

3. On the other hand, the defendant No 11 to 14 counsels filed objection to said application contended that application filed by the plaintiff is not maintainable either in law or facts. Further he contended that item No-1 of the suit property originally belongs to one shivappa and he sold the same in favour of grandmother of plaintiff and defendant No-



1 to 10, after demise of Lakkamma, the father of plaintiff and father of defendant No-1 to 9 have orally partitioned the family properties and the father of defendant No-1 to 9 has sold to extent of 1 acre 3 guntas in favour of their father through registered sale deed dated 21/07/1982 and father of plaintiff sold to extent of 1 acres 3 gunts in favour of one Rayanna through registered sale deed dated 04/08/1976 pertaining to item No-1 of the suit property.

4. Further they are contended that the said Rayanna sold the said property in favour of Doddamallaiah on 08/05/1980. Further defendant No-11 contended that registered gift deed dated 26/11/2020 he was in possession and enjoyment of the item No-1 of the suit property. Further the plaintiff and defendant No-1 to 10 and their fathers have lost their right in the item No-1 of the suit property and they are raised loan from banks and improve the suit property and amongst these grounds, prayed to dismiss the application with exemplary costs.

5. Heard, perused the records.

6. The points that arise for my consideration is as under :

1. Whether plaintiff has made out sufficient grounds to allow the application ?
2. What order ?



7. My finding to the above points is as under ;

Point No.1 ... In the Negative,

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

REASONS

8. **POINT No.1** : It is the specific contention of plaintiff that there are aracanut and coconut trees in the item No. 1 of schedule property which are ready for harvest and same was conducted by auction and said amount was deposited in the court. The contention of the defendant No-11 to 14 that the father of plaintiff and defendant No-1 to 10 are lost their right in the item No-1 of the suit property and they are sold their share through registered sale deed.

9. In the present case, the father of plaintiff and father of defendant No-1 to 9 have orally partitioned the family properties and the father of defendant No-1 to 9 has sold to extent of 1 acre 3 guntas in favour of their father through registered sale deed dated 21/07/1982 and father of plaintiff sold to extent of 1 acres 3 gunts in favour of one Rayanna through registered sale deed dated 04/08/1976 pertaining to item No-1 of the suit property. Further they are contended that the said Rayanna sold the said property in favour of Doddamallaiah on 08/05/1980. Further defendant No-11 contended that registered gift deed dated 26/11/2020 he was



in possession and enjoyment of the item No-1 of the suit property. Further the plaintiff and defendant No-1 to 10 and their fathers have lost their right in the item No-1 of the suit property and at this stage the plaintiff has not produce any single document to show that he is growing the aracnut and coconut trees in the item No-1 of the suit and if the plaintiff will succeeded the suit he will be entitle the mense profit. Further the reasons stated in the affidavit of the plaintiff is not purview of order XL Rule 1(a) (d) and 5 R/w,Sec-151 of C.P.C Hence for the above said reasons, I answer point No.1 in the 'Negative'.

10. **POINT No.2** : For the reasoning's given to point No.1, I proceed to pass the following :

ORDER

I.A. No.VI filed by plaintiff under Order
XL Rule 1(a) (d) Rule 5 R/w, Sec-151 of
C.P.C is hereby rejected.

No order for cost.

(Dictated to the stenographer directly on computer, corrected by me and then pronounced in open court on this **09th day of November, 2023**)

Sd/-

(Raghunatha Gowda K.T.)
Prl. Civil Judge & J.M.F.C.,
Madhugiri.