

KAUK510001032019



**IN THE COURT OF CIVIL JUDGE & JMFC, HALIYAL  
AT: HALIYAL, UTTARA KANNADA**

**PRESENT: -DESHABHUSHAN KOUJALAGI,  
B.A.LLB.,  
CIVIL JUDGE & JMFC., HALIYAL.**

**DATED THIS THE 31<sup>st</sup> DAY OF AUGUST, 2024**

**O.S. No.28/2019**

- PLAINTIFFS :**
- 1.** Sri. Narayan Devendra Hirekar,  
Age: 56 years, Occ: Agriculture,  
R/o: Modalgera Village,  
Tal: Haliyal, Dist: Uttar Kannada.
  - 2.** Sri. Prahlad Devendra Hirekar,  
Age: 52 years, Occ: Agriculture,  
R/o. Modalgera Village,  
Tal: Haliyal, Dist: Uttar Kannada.

**(By: Sri. Y.N.A, Advocate)**

**V/s**

- DEFENDANTS:**
- 01.** Smt. Indu D/o Moteppa Hirekar,  
Age: 64 years, Occ: Agriculture.
  - 02.** Smt. Honnavva D/o Moteppa  
Hirekar, Age: 62 years,  
Occ: Agriculture.
  - 03.** Sri. Ramdas Yallari Magwadkar,  
Age: 50 years,  
Occ: Agriculture.
  - 04.** Sri. Shrikant Yallari Magwadkar,  
Age: 49 years,  
Occ: Agriculture.

05. Sri. Dharmaraj Yallari Magwadkar,  
Age: 47 years,  
Occ: Agriculture.

All are R/o. Modalgera Village,  
Tq: Haliyal, Dist: Uttar Kannada.

06. Sri. Rudrappa Somaning Banoshi,  
Age: 75 years,  
Occ: Agriculture,  
R/o. Mangalwad, Tq: Haliyal (U.K).

07. Sri. Kedari Parasappa Banoshi,  
(deceased by his LRs)

7(a). Sri. Subhash Kedari Banoshi,  
Age: 66 years, Occ: Agriculture,  
R/o. Mangalwad, Tq: Haliyal (U.K).

7(b). Sri. Chandrakant Kedari Banoshi,  
(deceased by his LRs)

7(b)(1). Smt. Yallavva Chandrakant Banoshi,  
Age: 45 years, Occ: Agriculture,  
R/o. Mangalwad,  
Tq: Haliyal (U.K).

7(b)(2). Smt. Shruti Vinod Makadam,  
Age: 26 years, Occ: Housewife,  
R/o. Chatangera Village,  
Tq: Haliyal (U.K).

7(b)(3). Sri. Rama Chandrakant Kedari  
Banoshi, Age: 25 years,  
Occ: Agriculture,  
R/o. Mangalwad,  
Tq: Haliyal (U.K).

7(c). Sri. Shantaram Kedari Banoshi,  
Age: 54 years, Occ: Agriculture,  
R/o. Mangalwad Village,  
Tq: Haliyal (U.K).

*(D-1 to 5 By Sri. S.G.N, Adv)*

*(D-6 and 7(a), 7(b)(1) to (b)(3), 7(c) By  
Sri. L.S.A, Adv)*

**ORDERS ON PRELIMINARY ISSUE (ADDITIONAL  
ISSUE NO.1)**

The present suit is filed by the plaintiffs against the defendants for the relief of declaration and for recovery of possession of suit schedule properties.

2. In pursuance of service of suit summons, the defendants have appeared through their learned counsels. The defendant No.1 has filed the written statement and subsequently, she has got amended her written statement wherein, she has taken a contention that, the plaintiffs have not shown the actual market value of the suit schedule properties and the plaintiffs have not paid correct Court fees and as such, this Court has no jurisdiction to entertain the present suit. In view of said specific contention that, the Court has framed the present additional issue and the same has been treated as preliminary issue and the same reads as under:

**Preliminary Issue (Additional Issue No.1): Whether the defendants prove that, this Court lacks pecuniary jurisdiction to entertain the present suit?**

3. Heard on Preliminary Issue (Additional Issue No.1) on both side. Perused the entire materials.

4. Having heard and perusal of the records, answer of the Court to the aforesaid Preliminary Issue (Additional Issue No.1) is as under:

**Preliminary Issue (Additional Issue No.1):** Answered in the **NEGATIVE** for the following:

**REASONS**

5. **PRELIMINARY ISSUE (ADDITIONAL ISSUE NO.1):** The plaintiffs have filed the present suit against the defendants for the relief of declaration to declare that, the defendants are in illegal possession of the suit schedule properties and they do not have any rights, interest and title over the suit schedule properties. The plaintiffs have also sought the relief of

declaration to declare that, the alleged Will executed by Smt. Demakka in favour of defendants No.4 and 5 and certification of M.E No.418 based on said Will is illegal and also sought the relief of recovery of possession of the suit schedule properties.

6. According to the plaintiffs, one Sri. Moteppa Gunjappa Hirekar was the propositus of the family of the plaintiffs and defendants and he is the grandfather of the plaintiffs and father of the defendants No.1 and 2. Smt. Demakka Moteppa Hirekar was the grandmother of plaintiffs No.1 and 2 and mother of defendants No.1 and 2. Both Sri. Moteppa Gunjappa Hirekar and his wife Smt. Demakka Moteppa Hirekar were already died. The father of the plaintiffs i.e., late Sri. Devendra is the adopted son of late Sri. Moteppa Gunjappa Hirekar and Smt. Demakka Moteppa Hirekar.

7. It is further case of the plaintiffs that, the suit schedule properties are joint family properties of plaintiffs and defendants No.1 and 2. Originally, Item No.2 of the suit schedule property bearing Block No.45 was totally measuring 36 acres 18 gunthas and it was owned by grandfather of the plaintiffs by name late

Sri. Moteppa Gunjappa Hirekar as per M.E No.94. After his death, name of his wife Smt. Demakka and minor daughters i.e., names of defendants No.1 and 2 and adopted son i.e., Devendra were entered to the records of Block No.45 as per M.E No.248. As such, wife of late Sri. Moteppa Gunjappa Hirekar i.e., Smt. Demakka, his two daughters i.e., defendants No.1 and 2 and his adopted son i.e., father of the plaintiffs were become owners to the extent of 1/4th share each in the said land.

**8.** It is further case of the plaintiffs that, the father of the plaintiffs i.e., late Sri. Devendra had filed O.S No.64/1961 to declare his status on the basis of adoption deed and the said suit was ended in compromise. In the said compromise, it was agreed that, eastern portion of Block No.45 measuring 12 acres has to be given to defendants No.1 and 2 herein and the same has to be enjoyed by late Smt. Demakka Moteppa Hirekar till her death and if said Demakka Hirekar was died before the marriage of defendants No.1 and 2 herein, the possession of the said 12 acres of land has to be given to defendants No.1 and 2 and after their marriage, said 12 acres of land in Block No.45 has to be given to the father of the plaintiffs i.e., late Sri. Devendra.

9. It is further case of the plaintiffs that, the aforesaid decree was also certified as per M.E No.274 dated 22.05.1963. In spite of such decree, the names of defendants No.1 and 2 have been continued in the revenue records of Block N.45. Though the names of defendants No.1 and 2 were continued to the extent of 12 acres of land of Block No.45 but, the possession was with the father of the plaintiffs by name late Sri. Devendra. Apart from this, late Smt. Demakka was not having any rights in the said 12 acres of land and as such, the alleged Will executed by her is illegal in respect of said 12 acres of land.

10. It is further case of the plaintiffs that, after the death of their father, they have perused the revenue records of said 12 acres of land and it was found that, the names of defendants No.6 and 7(a) were entered to the records of the suit property based on registered sale deeds and the defendants by colluding with revenue authorities have got divided Block No.45. In spite of a Panchayat convened in the presence of elders, the defendants have not handed over the possession of the suit properties to the plaintiffs and as such, the plaintiffs are constrained to file the present suit for the aforesaid reliefs.

11. On the other hand, the defendant No.1 has denied the case of the plaintiffs and she has contended that, late Sri. Moteppa was married to Smt. Demakka and out of their marriage, the defendants No.1 and 2 and Smt. Savakka, Smt. Rukmini, Smt. Janakibai were born. Subsequently, in the year 1961, one Sri. Gavadu S/o Narayan Pataykar was started to disturb the possession of the suit schedule properties under the guise that, he was the adopted son of late Sri. Moteppa and as such, the defendants No.1 and 2 through her next friend i.e., their mother Smt. Demakka has filed O.S No.64/1961. In the said suit, Sri. Gavadu S/o Narayan Pataykar has appeared and he has contended that, he is the adopted son of late Sri. Moteppa on the basis of adoption deed dated 16.01.1953 which was stated to be registered before the Sub-Registrar, Haliyal on 22.06.1953. The said suit was ended in compromise. In the said compromise, the suit schedule properties were came to the mother of the defendants No.1 and 2 for her maintenance and remaining properties have been given to the adopted son of late Sri. Moteppa by name Sri. Devendra. The said compromise decree was came to the

knowledge of the defendants No.1 and 2 after filing of the present suit.

**12.** It is further case of the defendant No.1 that, subsequently, the mother of the defendants No.1 and 2 has filed O.S No.60/1970 before this Court against the adopted son Sri. Devendra and one Sri. Kedarappa S/o Parasappa Banoshi in respect of Survey No.45 for the relief of permanent injunction and same was decreed on 08.04.1974. The compromise decree passed in O.S No.64/1961 was not for the benefit of defendants No.1 and 2 herein and as such, the said compromise decree is not having any legal force.

**13.** It is further case of the defendant No.1 that, even if for the sake of arguments, it is considered that, the compromise decree passed in O.S No.64/1961 was legal one and the suit schedule properties have been given to the mother of the defendants No.1 and 2 for her maintenance then, as per Section 14(1) of the Hindu Succession Act, the suit properties became absolute properties of late Smt. Demakka and as such, none could claim any rights in the same.

**14.** It is further case of the defendant No.1 that, the adopted son i.e., late Sri. Devendra was died before his marriage and before the death of late Smt. Demakka and as such, Smt. Demakka became the absolute owner of the suit schedule properties and after her death, the defendants No.1 and 2 have become the owners of the same. Since late Smt. Demakka was the absolute owner of the suit schedule properties, she has executed a Will in favour of her grand children i.e., defendants No.4 and 5 in respect of her share measuring 09 acres 04 gunthas out of total extent of Survey No.45 as per registered Will dated 31.10.1973.

**15.** It is further case of the defendant No.1 that, till her death, late Smt. Demakka was under the care and custody of defendants No.1 to 5 and after her death, names of defendants No.4 and 5 have been entered on the basis of Will and the same cannot be questioned by the plaintiffs. It is further case of the defendant No.1 that, the plaintiffs are no way concerned to the family of the defendants No.1 and 2 and as such, the suit of the plaintiffs is liable to be dismissed.

**16.** As already stated above, by amending the written statement, the defendant No.1 has filed additional written

statement and she has contended that, the plaintiffs have not shown the correct market value of the suit schedule properties and they have also not paid correct Court fees. At this stage, it is to be noted that, nowhere in the additional written statement, the defendant No.1 has stated as to what is the actual market value of the suit schedule properties and under what provisions of law, the plaintiffs ought to have paid the Court fees. Apart from this, the defendant No.1 has not produced any documents at this stage to show that, this Court lacks pecuniary jurisdiction to entertain the present suit.

17. When the matter was posted for cross-examination of PW.1, the defendant No.1 has filed an application for amendment of written statement and she has raised the aforesaid new plea. Even though the defendant No.1 has taken a contention that, the plaintiffs have not shown actual market value of the suit schedule properties but, she has not at all taken the contention that, this Court lacks pecuniary jurisdiction to entertain the present suit. A suit to be valued for two purpose i.e., for the purpose of payment of Court fees and for the purpose of pecuniary jurisdiction. In this case, the defendant No.1 has not at all produced any documents to

show that, market value of the suit schedule properties exceeds pecuniary jurisdiction of this Court. When such being the case, the contention raised by the defendant No.1 by way of filing of additional written statement is not sustainable. As such, Court opines that, this Court is having jurisdiction to entertain the present suit. Accordingly, Preliminary Issue (Additional Issue No.1) is answered in the **NEGATIVE** and Court proceeds to pass the following:

**ORDER**

Preliminary Issue (Additional Issue No.1)  
is answered in the Negative.

Consequently, it is held that, suit of the  
plaintiffs is maintainable.

(Dictated to the Stenographer, transcribed and typed by her, then corrected, signed and pronounced by me in the Open Court on this the *31<sup>st</sup> Day of August, 2024*)

**(DESHABHUSHAN KOUJALAGI)**  
Civil Judge & J.M.F.C., Haliyal.