NC: 2024:KHC-D:16551
MFA No. 100650 of 2023

**IN THE HIGH COURT OF KARNATAKA,
DHARWAD BENCH**

DATED THIS THE 12TH DAY OF NOVEMBER, 2024

BEFORE

THE HON'BLE MR. JUSTICE C.M. POONACHA

MISCELLANEOUS FIRST APPEAL NO.100650 OF 2023 (CPC)

BETWEEN:

SHRI KALLPPA S/O.PRADANI URANE,
AGE: 72 YEARS, OCC: AGRICULTURE,
R/O: CHIKKODI, TQ: CHIKODI,
DISTRICT: BELGAVI – 590 201.

...APPELLANT

(BY SRI SHIVRAJ S. BALLOLI, ADVOCATE FOR
SRI CHETAN B. PATIL, ADVOCATE)

AND:

Digitally signed by SAROJA HANGARAKI
Location: High Court of Karnataka

1. SHRI RAMACHANDRA S/O. PRADANI,
AGE: 70 YEARS, OCC: AGRICULTURE,
R/O: NEAR STADIUM, BEHIND MAGADUM SCHOOL, JAISINGPUR, TAL: SHIROL,
DIST: KOLHPUR,
STATE: MAHARASTRA.

2. SMT. MANGAL SUBHAS ALIYAS BABU URANE,
AGE: 57 YEARS, OCC: HOUSE HOLD WORK,
R/O: 9TH LANE, DATTA COLONY,
CHANDUR ROAD, KABANUR,
TAL: HATAKANGALA, DIST: KOLHPUR,

3. SHRI PRAVEEN SUBHAS @ BABU URANE,
AGE: 34 YEARS, OCC: PRIVATE SERVICE,
R/O: 9TH LANE, DATTA COLONY,
CHANDUR ROAD, KABANUR,
TQ: HATAKANGALA, DIST: KOLHAPUR.

4. SMT. SWATI RAM TELSINGE,
AGE: 37 YEARS,
OCCU: HOUSEHOLD WORK,
R/O: 3RD LANE, DATTA COLONY,
CHANDUR ROAD, KABANUR,
TQ: HATAKANGAL, DIST: KOLHAPUR

…RESPONDENTS

(BY SRI NEELENDRA D. GUNDE, ADVOCATE FOR R1 TO R4)

THIS MFA IS FILED U/O.43 RULE 1 R/W SECTION 104 OF THE CODE OF CIVIL PROCEDURE, SET ASIDE THE IMPUGNED ORDER DATED 01.12.2022 PASSED BY THE LEARNED SENIOR CIVIL JUDGE, CHIKODI IN O.S.NO.07/2020 ON I.A.NO.III AND THEREBY DISMISS THE IA NO.III FILED BY THE DEFENDANT/RESPONDENT 1 TO 4 AND ETC.,

THIS APPEAL, COMING ON FOR ADMISSION, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: THE HON'BLE MR. JUSTICE C.M. POONACHA

ORAL JUDGMENT

(PER: THE HON'BLE MR. JUSTICE C.M. POONACHA)

The present appeal is filed by the plaintiff challenging the order dated 01.12.2022 passed on I.A No.III filed under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, 1908[1] in O.S No.7/2020 by Court of Principal Senior Civil Judge, Chikodi[2].

2. The relevant facts in brief leading to the present appeal are that the appellant/plaintiff instituted a suit in O.S No.7/2020 seeking for a 5/8th share in the suit properties and also for other reliefs. The respondent Nos.1 to 4 herein who were arrayed as defendant Nos.1 to 4 in the suit entered appearance before the Trial Court and filed their written statement contesting the case of the plaintiff. The defendants, vide the said written statement also, made a counter claim seeking for declaration, damages and other reliefs. The defendants also filed I.A No.III under Order XXXIX Rule 1 and 2 of the CPC to

[1] Hereinafter referred to as the 'CPC'
[2] Hereinafter referred to as the 'Trial Court'

restrain the plaintiff from disturbing their peaceful possession in respect of R.S No.307/3 and R.S No.307/4. The said application was objected to by the plaintiff. The Trial Court, by its order dated 01.12.2022, allowed I.A No.III. Being aggrieved, the present appeal is filed.

3. Learned counsel for the appellant assailing the order passed by the Trial Court vehemently contends that the Trial Court while allowing I.A No.III has not recorded any finding with regard to any encroachment made by the plaintiff. Further, the order of the Trial Court would have the effect of excluding the plaintiff from possession of the suit properties which he is otherwise entitled to jointly possess with the defendants. Hence, he seeks for allowing of the present appeal and setting aside of the order passed by the Trial Court.

4. Per contra, learned counsel for the respondents justifies the order passed by the Trial Court and further contends that there has been a prior partition and the said prior partition having been acted upon by the plaintiffs, as the plaintiffs have sold the properties that was allotted to

share. That the Trial Court has adequately considered the factual matrix of the matter and allowed the application which ought not to be interfered with by this Court in the present appeal.

5. It is forthcoming that the Trial Court while considering I.A No.III filed by the defendants has held as follows:

> *10. In order to prove alleged partition as claimed by defendants, the defendants mainly rely on an unregistered partition deed dated 30.06.2013, wherein it is mentioned that the plaintiff, the defendant-1 and the deceased Subhash, were in separate possession and enjoyment of 2 acres 13 guntas each in said R.S.No.307 and accordingly they partitioned said land in three hissas. Further, as per said partition, the said land is phoded as R.S.No.307/3, R.S.No.307/4 and R.S.No.307/5 and the names of defendant-1, deceased Subhash and plaintiff, is entered to R.S.No.307/3, R.S.No.307/4 and R.S.No.307/5 respectively. Accordingly, they are in separate possession and enjoyment of the same. Further, according to defendants, after said partition the plaintiff sold some of the portion of his land in R.S.No.307/5 to third parties. Hence, it*

is contended that as per said partition the defendants 1 to 4 are in separate possession and enjoyment of R.S.No.307/3 and R.S.No.307/4. But, the plaintiff is interfering and trying to encroach defendants' land.

11. The documents produced by parties at this stage clearly show that the plaintiff, defendant-1 and deceased Subhash, were in separate possession and enjoyment of said R.S.No.307/3, R.S.No.307/4 and R.S.No.307/5 respectively. Whether the said separate possession is based on partition or it is only a family settlement is altogether a different aspect. But, at this stage, the documents placed on record clearly disclose separate possession of defendants over R.S.No.307/3 and R.S.No.307/4. Further, the plaintiff has not explained why said R.S.No.307/3 is sub-phoded as R.S.No.307/3, R.S.No.307/4 and R.S.No.307/5.

12. As the defendants have proved their exclusive possession over suit R.S.No.307/3 and R.S.No.307/4, even if it is presumed that there is no partition between plaintiff and defendants till date, as the defendants 1 to 4 have proved their exclusive possession over suit R.S.No.307/3 and R.S.No.307/4, their possession needs to be protected."

(emphasis supplied)

6. It is forthcoming that, the Trial Court has noticed that, the defendants have demonstrated that they have been in exclusive possession of the properties bearing R.S No.307/3 and R.S No.307/4. It is further noticed that the R.S No.307/5 was allegedly allotted to the name of the deceased defendant No.1 and plaintiff, and that the plaintiff has sold some portion of his land in R.S No.307/2 to third parties.

7. The Trial Court considering the material on record has recorded a finding that the defendants are entitled to the order of injunction as sought for in I.A No.III.

8. It is clear from the aforementioned that the Trial Court has exercised its discretion and allowed I.A No.III filed by the defendants. The plaintiffs have failed in demonstrating that the said exercise of discretion by the Trial Court is contrary to any specific material on record and the findings recorded by the Trial Court are in any manner erroneous.

9. In view of the aforementioned, the above appeal is dismissed as being devoid of merit.

10. The observations made by the Trial Court as well as this Court are only for the purpose of consideration of I.A No.III and the Trial Court shall proceed further in the suit uninfluenced by any of the observations made either by the Trial Court or this Court.

11. Needless to state that the parties shall co-operate with the Trial Court to dispose of the suit as expeditiously as possible.

Sd/-
(C.M. POONACHA)
JUDGE

PMP
CT-ASC
List No.: 1 Sl No.: 46