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

DATED THIS THE 17TH DAY OF DECEMBER, 2024

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

**MISCELLANEOUS FIRST APPEAL NO.103114 OF 2022 (CPC)
C/W
MISCELLANEOUS FIRST APPEAL NO.100284 OF 2024**

IN MFA.NO.103114/2022:

BETWEEN:

ADIVEPPA S/O. RAMAPPA GODACHI,
AGE: 72 YEARS, OCC: AGRICULTURE,
R/O: MAREGUDDI VILLAGE, TQ: JAMKHANDI,
DIST: BAGALKOT - 587 313.

...APPELLANT

(BY SRI SRINIVAS B. NAIK, ADVOCATE)

AND:

1. SMT. KRISHNAWWA @ SUSILA
W/O. VENKAPPA GODACHI,
AGE: 47 YEARS, OCC: HOUSEHOLD WORK,
R/O: P.M. BUDNI VILLAGE, TQ: MUDHOL,
DIST: BAGALKOT - 587 313.

2. KUMARI ASHWINI D/O. VENKAPPA GODACHI,
AGE: 22 YEARS, OCC: HOUSEHOLD WORK,
R/O: P.M. BUDNI VILLAGE, TQ: MUDHOL,
DIST: BAGALKOT - 587 313.

3. KUMARI LAXMI D/O. VENKAPPA GODACHI,
AGE: 21 YEARS, OCC: HOUSEHOLD WORK,
R/O: P.M. BUDNI VILLAGE, TQ: MUDHOL,
DIST: BAGALKOT - 587 313.

...RESPONDENTS

(BY SRI GURURAJ K., ADVOCATE FOR
SRI K.S.PATIL, ADVOCATE FOR R1 TO R3)

THIS MFA IS FILED U/O.XLIII RULE 1(r) OF THE CODE OF CIVIL PROCEDURE, 1908, PRAYING TO SET ASIDE THE ORDER

MANJANNA E
Digitally signed by MANJANNA E
Location: High Court of Karnataka, Dharwad Bench
Date: 2024.12.19 15:37:20 +0530

DATED 02.08.2021 PASSED BY THE ADDITIONAL SENIOR CIVIL JUDGE, JAMKHANDI, ON IA NO. 1 IN OS NO. 126/2020, IN THE INTEREST OF JUSTICE AND EQUITY AND ETC.,

IN MFA.NO.100284/2024:

BETWEEN:

ADIVEPPA S/O. RAMAPPA GODACHI,
AGE: 72 YEARS, OCC: AGRICULTURE,
R/O: MAREGUDDI VILLAGE, TQ: JAMKHANDI,
DIST: BAGALKOT - 587 313.

…APPELLANT

(BY SRI SRINIVAS B. NAIK, ADVOCATE)

AND:

1. SMT. KRISHNAWWA @ SUSILA
   W/O. VENKAPPA GODACHI,
   AGE: 47 YEARS, OCC: HOUSEHOLD WORK,
   R/O: P.M. BUDNI VILLAGE, TQ: MUDHOL,
   DIST: BAGALKOT - 587 313.

2. KUMARI ASHWINI D/O. VENKAPPA GODACHI,
   AGE: 22 YEARS, OCC: HOUSEHOLD WORK,
   R/O: P.M. BUDNI VILLAGE, TQ: MUDHOL,
   DIST: BAGALKOT - 587 313.

3. KUMARI LAXMI D/O. VENKAPPA GODACHI,
   AGE: 21 YEARS, OCC: HOUSEHOLD WORK,
   R/O: P.M. BUDNI VILLAGE, TQ: MUDHOL,
   DIST: BAGALKOT - 587 313.

4. BASAPPA S/O. LAKAPPA GALAGALI,
   AGE: 44 YEARS, OCC: AGRICULTURE,
   R/O: NAGANUR, TQ: JAMKHANDI,
   DIST: BAGALKOT – 587 301.

…RESPONDENTS

(BY SRI GURURAJ K., ADVOCATE FOR
SRI K.S.PATIL, ADVOCATE FOR R1 TO R3)

THIS MFA IS FILED U/O.XLIII RULE 1(r) OF THE CODE OF CIVIL PROCEDURE, 1908, PRAYING TO SET ASIDE THE ORDER DATED 26.09.2021 PASSED BY THE ADDITIONAL SENIOR CIVIL JUDGE AND JMFC, JAMKHANDI, ON IA NO. 5 IN OS NO. 126/2020, IN THE INTEREST OF JUSTICE AND EQUITY AND ETC.,

THESE APPEALS, 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)

MFA No.103114/2022 is filed challenging the order dated 02.08.2021 passed on I.A.No.1 in O.S.No.126/2020 by the Additional Senior Civil Judge, Jamkhandi[1]. MFA No.100284/2024 is filed challenging the order dated 26.09.2023 passed on I.A.No.5 in O.S.No.126/2020 by the Trial Court.

2. Since both the appeals are filed challenging the orders passed on I.A.Nos.1 and 5 of the same suit, both the appeals are taken up together for consideration.

3. The relevant facts leading to the present appeals are that the appellant/plaintiff instituted a suit for declaration that the plaintiff has a preferential right to acquire the suit schedule 'B' property of the defendants in

[1] Hereinafter referred to as 'Trial Court'

R.S.No.75/2, 75/1 and 77/2 of Mareguddi village and for other reliefs. The respondents were arrayed as defendants in the said suit.

4. In the said suit, the plaintiff filed I.A.No.1 under Order XXXIX Rule 1 and 2 read with Section 151 of the Code of Civil Procedure[2] to restrain the defendants from alienating the suit properties. The plaintiff also filed I.A.No.5 under Order XXXIX Rule 1 and 2 of CPC to restrain the proposed defendant No.4 from alienating the suit properties. The Trial Court by its orders dated 02.08.2021 and 26.09.2023 dismissed I.A.Nos.1 and 5 respectively. Being aggrieved, the present appeals are filed.

5. Heard the submissions of learned counsel, Sri.Srinivas B Naik for the appellant and learned counsel, Sri.Gururaj K. for learned counsel, Sri.K.S.Patil for the respondents. Perused the appeal memo papers.

[2] Hereinafter referred to as 'CPC'

6. The Trial Court while considering I.A.No.1 has noticed that the preferential right under Section 22 of the Hindu Succession Act, 1956 can be claimed by the heirs of an intestate property mentioned in Class-I and that as per the averments made in the plaint, the Trial Court has noticed that the plaintiff has merely averred that the defendants are the owners of the suit lands by virtue of the order passed in FDP No.1/2010. It is further noticed that the copy of the order passed in FDP No.1/2010 has not been produced. Further, the Trial Court has also noticed that the defendants are the wife and children of the brother of the plaintiff. Hence, the Trial Court has recorded finding that the defendants do not come within the purview of heirs of Class-I in the schedule to the Hindu Succession Act, 1956 and that the plaintiffs had not made out a prima facie case.

7. The Trial Court while considering I.A.No.5 has also noticed that while considering I.A.No.1 it had

recorded a finding that the plaintiff had failed to make out a prima facie case.

8. Although learned counsel for the appellant vehemently seeks to impugn the orders passed by the Trial Court in I.A.Nos.1 and 5, there is no material placed on record to demonstrate that the defendants are the Class-I heirs of the plaintiff.

9. In view of the aforementioned, the above appeals are dismissed as being devoid of merit.

10. The Trial Court shall proceed further in the suit uninfluenced by the observations made by the Trial Court as well as by this Court, while considering I.A.Nos.1 and 5.

Sd/-
(C.M. POONACHA)
JUDGE

SH/CT-ASC
List No.: 1 Sl No.: 53