IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 2ND DAY OF APRIL, 2025

BEFORE

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

MISCL. FIRST APPEAL NO.200690/2023(CPC)

BETWEEN:

1. SMT. PADMAVATI W/O SHIVAKUMAR JEWARGI,
   AGE: 59 YEARS, OCC: GOVT. SERVICE.
   R/O H.NO.11-470, 11-471,
   BRAHMPUR,
   KALABURAGI-585 103.

2. DEEPAK KUMAR S/O SHIVAKUMAR JEWARGI,
   AGE: 39 YEARS, OCC: PRIVATE SERVICE,
   R/O H.NO.11-470, 11-471,
   BRAHMPUR,
   KALABURAGI-585 103.

Digitally signed by SHIVALEELA DATTATRAYA UDAGI
Location: HIGH COURT OF KARNATAKA

3. DINESH KUMAR S/O SHIVAKUMAR JEWARGI,
   AGE: 37 YEARS, OCC: PRIVATE SERVICE,
   R/O H.NO.11-470, 11-471,
   BRAHMPUR,
   KALABURAGI-585 103.

...APPELLANTS

(BY SRI ASHOK MULAGE, ADVOCATE)

AND:

1. RAMESH S/O MALLESHAPPA JEWARGI,
   AGE: 64 YEARS, OCC: BUSINESS,

R/O H.NO.11-470, 11-471,
BRAHMPUR,
KALABURAGI-585 103.

2. RUPAVATHI W/O RAMESH KUMAR JEWARGI,
AGE: 58 YEARS, OCC: HOUSEHOLD,
R/O H.NO.11-470, 11-471,
BRAHMPUR,
KALABURAGI-585 103.

3. PARVATHIBAI W/O MALLESHAPPA JEWARGI,
AGE: 92 YEARS, OCC: NIL,
R/O H.NO.11-470, 11-471,
BRAHMPUR,
KALABURAGI-585 103.

…RESPONDENTS

(BY SMT. RATNA N. SHIVAYOGIMATH, ADVOCATE)

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER ORDER 43 RULE 1 OF CPC, PRAYING TO: A) ALLOW THE APPEAL AND SET ASIDE THE IMPUGNED ORDER ON I.A NO.1 UNDER ANNEXURE-H DATED 14.06.2022 PASSED BY THE I ADDL. SENIOR CIVIL JUDGE, KALBURAGI, IN O.S. NO.203/2018; B) ALLOW I.A NO.1, INTERIM APPLICATION FILED UNDER ORDER 39 RULE 1 AND 2 OF C.P.C., BY THE PLAINTIFFS AND GRANT INJUNCTION AGAINST THE DEFENDANTS RESTRAINING THEM FROM ALIENATING, MORTGAGING OR CREATING ANY CHARGE OVER THE SUIT SCHEDULE - A TO L PROPERTIES IN ANY MANNER, PENDING DISPOSAL OF THE SUIT.

THIS APPEAL COMING ON FOR ORDERS, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE C.M. JOSHI

ORAL JUDGMENT

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

1. Heard learned counsel appearing for the appellants and the learned counsel appearing for the respondents.

2. The grievance of the appellants herein is that this Court by virtue of the order dated 09.11.2020 considered an order passed by the trial Court in O.S. No.203/2018 and came to the conclusion that in view of certain documents which were produced by the appellants, those documents need to be considered by the trial Court while disposing of the I.A. No.1 filed under Order XXXIX Rule 1 and 2 of CPC and remanded the matter to the trial Court for fresh consideration. During such remand, this Court had directed the respondents herein not to alienate the suit schedule properties. The trial Court, after such remand, passed a detailed order dated 14.06.2022, where the application for interim injunction came to be dismissed. It is submitted the order of injunction not to alienate the properties was in operation when this Court remanded the matter. Now the learned counsel for the appellants submits

that the respondents are on the verge of the alienating the suit properties and therefore, there may be an order of injunction not to alienate the same.

3. Learned counsel for the appellants elaborating his submissions states that all along the appellants/plaintiffs contended that they being decedents of one Shivakumar, who was the son of defendant No.3 and brother of defendant No.1, they are entitled for partition while disputing the alleged partition deed dated 18.12.2002. Shivakumar was bed ridden in the year 2007 and when he died, certain documents came into existence, which are subject matter of the lis before the trial Court. In other words, it is his contention that the alleged partition deed is an out come of the fraud and coercion and therefore, the said Shivakumar had disputed the same during his life time. He submits that based on the said partition, the defendants are trying to alienate the properties and such alienation would jeopardize the share of the plaintiffs/appellants in the suit schedule properties.

4. *Per contra*, learned counsel appearing for the respondents would submit that the trial is at its fag end and the

recording of the evidence has been over and the only legal representative of defendant No.3 – Parvatibai is to be brought on record, their plea has to be heard. Obviously, the plea of the legal representative of Parvatibai would be in consonance with the stand taken by her and it cannot be contrary to the stand taken by her. Therefore, when the matter is at the fag end, there is no need for any interim injunction as prayed by the appellants.

5. After hearing both the sides, it is evident that the lis between the parties is in respect of the partition which had occurred on 18.12.2002 and the denial of the same by the deceased Shivakumar as well as the present plaintiffs. This aspect needs to be decided by the Trial Court based on the evidence available on record. It is pertinent to note that the alienation of any of the properties which were allotted to the defendants in the partition deed dated 18.12.2002, which is now a disputed partition, would only result in complication of the *lis* further. Ultimately, the properties which allegedly fell to the share of the defendants, if found that there was no such partition, would end up in a decree which results in equitability

being considered by the Executing Court. The purchasers of such properties would also be at risk.

6. Nevertheless, the provisions of Section 52 of the Transfer of Property Act come in play and any alienations that would be made by the respondents herein, would be subject to the out come of the lis. In that view of the matter, the defendants are advised not to alienate the properties until the suit is disposed of.

7. Under the circumstances that the recording of the evidence is over, the legal representatives of defendant No.3 are allowed to be brought on record and to be heard, it would suffice to state that the trial Court be directed to expedite the disposal of the *lis* within a stipulated time and till that specified time, the respondents be directed not to alienate the properties. With these observations, the appeal deserves to be disposed of. Hence, the following:

ORDER

i) The appeal is disposed of.

ii) The defendants, who are respondent Nos.1 and 2 are directed not to alienate the suit properties for a period of three months from the date of this order.

iii) The Trial Court is directed to expedite the disposal of the suit finally, within three months from the date of this order.

iv) Both the parties to the lis are directed to co-operate with the trial Court for expeditious disposal of the lis as observed above.

v) Any observation made in this appeal does not come in the way of merits of the case.

In view of the appeal itself being disposed of, the other applications also stand disposed of.

Sd/-
(C.M. JOSHI)
JUDGE

SBS
List No.: 1 Sl No.: 16
CT: AK