

**IN THE COURT OF I ADDL. DISTRICT & SESSIONS JUDGE,
BAGALKOT TO SIT AT: JAMAKHANDI
AT: JAMAKHANDI.**

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Before: Smt. A.K.Naveen Kumari. B.Sc. LL.M.,
I Addl. District & Sessions Judge,
Bagalkot to sit at Jamakhandi.

Dated: This the 07th day of July-2018

Criminal Revision Petition No.01/2018

Revision Petitioners:

1. Hanamanth S/o Rangappa Balulad,
Age: 68 years, Occ: Agriculture,
R/o. Kishori village, Tq: Mudhol,
Dist: Bagalkot.
2. Basavaraj S/o Hanamant Balulad,
Age: 42 years, Occ: Agriculture
R/o. Kishori village, Tq: Mudhol,
Dist: Bagalkot.
3. Laxman S/o Rangappa Balulad,
Age: 30 years, Occ: Agriculture.,
R/o. Kishori village, Tq: Mudhol,
Dist: Bagalkot.

(Rept. by Adv., Sri. M.C.Bhandari)

-Vs-

Respondent

1. The Executive Magistrate and
Tahasildar, Mudhol Taluka,
MUDHOL, Dist: Bagalkot.
2. Circle Inspector of Police,
Mudhol Taluka, MUDHOL.

(Represented by Public Prosecutor)**:: O R D E R ::**

The petitioners have filed petition U/s.397 of the Criminal Procedure Code against the respondents challenging the order passed by the 1st respondent in MAG/CR/87/2017-18 in appointing the FGRI Mudhol as a receiver for the management of the lands bearing Sy.Nos. 6/1/K, 19/2 52/7, 52/8, 53/2A,53/2B,172/ and 172/3A of Kishori village of Mudhol taluk under section 145 of Cr.P.C.

2. The petitioners have challenged the same on the following:
Grounds:

It is contended that, civil suit is pending in O.S. No.38/2017 filed by the petitioners on 08-03-2017 against one Ramesh and others before the Senior Civil Judge, Mudhol for declaration of ownership in respect of the land situated at Kishori village of Mudhol Taluk. The petitioners have sought interim order of injunction in the said suit against Ramesh. In which Ramesh filed written statement on 20-03-2017. Even though it is a private dispute and civil suit is pending the respondent, who is the Taluk Executive Magistrate, Mudhol passed order U/s. 145 of the Criminal Procedure Code on 21-11-2017 to take possession of the land for the management of receiver on the report of the village accountant and revenue inspector. It is contended that, the order passed by the respondent is opposed to law. The learned Executive Magistrate has initiated

proceedings U/s. 145 of the Criminal Procedure Code without satisfying about urgency. It is the dispute between the parties and so, the question of violation of public peace does not arise at all. When the suit is pending, the respondent had no jurisdiction to take action. The 1st petitioner has filed Writ Petition in 20695/17 before the High Court of Karnataka to give protection to his life against harassment of his son Ramesh. The Hon'ble High Court passed an order on 25-05-2017 directing to give protection to the petitioner and his family members. The dispute is between the father and son regarding partition. The taluk magistrate has passed erroneous order on the false complaint of the 2nd respondent and false report of the village accountant and FGRI Mudhol without any enquiry. It is contended that the taluk magistrate has not given any satisfactory reasons for passing the impugned order under revision. Hence, prays for setting aside the order passed on 27-12-2017 in MAG/CR/87/2017-18.

3. After issue of notice, the learned Public Prosecutor appeared for the respondents and filed objections contending that, the executive Magistrate has initiated proceedings on the complaint of the police inspector Mudhol and report of the revenue officers and having satisfied about the urgency. The 1st petitioner is the father of the petitioners 2 and 3 and one Ramesh. It is denied that dispute

between the parties is a private dispute and there is no question of violation of public peace. It is contended that, from the report of the police officer and registration of case and counter case in Mudhol Police Station in Cr .No. 336 and 337 it is clear that, there is ill will between the parties and there will be damage to the properties and violation of the public peace. It is denied that no reasonable opportunity is given to the petitioners to put forth their statement. The petitioners 1, 2 and 4 appeared through advocate and filed their statement. The impugned order is not illegal, but based on the true facts. The petitioners filed Crl Rev.Pet No168/2017 in respect of the same order. Since they could not get any interim order from the Hon,ble court they have filed this present petition. Hence, prays for the dismissal of the petition.

4. Heard both the parties.

5. Now the points that arise for the consideration of the Court are:

(1) Whether appointing the revenue inspector
as a receiver to manage the family
properties of the petitioners is proper?

(2) To What Order?

6. My findings on the above points are as under:

Point No.1: In the Negative,

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

:: R E A S O N S ::

7. **Point No.1:** The contention taken by the petitioners and the observation made by the respondents discloses that Civil suit is pending between the petitioners and one of the son of the 1st petitioner namely Ramesh in O.S. No.38/17 before the Senior Civil Judge, Mudhol for declaration of ownership. Further it discloses that suit was filed by the petitioners on 08-03-2017 i.e. prior to the initiation of proceedings by the respondent Tahasildar. The very contention taken by the petitioners discloses that Ramesh had appeared before the Civil Court and filed his written statement before the Senior Civil Judge, Mudhol on 20-03-2017. The objection filed by the respondent discloses that, case and counter criminal cases are pending between the petitioners and Ramesh. In spite of it though the respondent has issued notice to the petitioners to appear before him on 22-12-2017 passed orders on 27-12-2017 for the appointment of receiver in respect of the disputed landed properties.

8. The respondent has no right to appoint receiver when the civil suit is pending between the parties. Moreover the documents produced by the petitioners discloses that 1st petitioner has filed writ petition before the Hon'ble High Court of Karnataka Dharwad Bench seeking protection to the life and liberty of him and his family members against his son i.e. Ramesh. Wherein the Hon'ble High

Court of Karnaaka has issued direction on 25-05-2017 to the station officer Mudhol Police station and also to the Assistant Commissioner to take immediate action in accordance with law. In spite of it the 1st respondent Tahasildar has proceeded to appoint receiver by taking possession of the landed properties by exceeding the limit. When Civil suit is pending, the respondent had no right to pass such order unless there is an order by the civil court. The respondent has not followed the procedure before initiating proceedings against the petitioners. Hence, I answer this point in the Negative.

9. **Point No.2:-** In view of answering point No.1 as above, I proceed to pass the following:

:: O R D E R ::

Petition is allowed.

The proceedings initiated by the 1st respondent in MAG/CR/87/2017-18 dated 27-12-2017 is set aside.

No order as to cost.

Send back the records.

(Dictated to the Stenographer script transcribed, typed by him and corrected by me, then the Judgment pronounced in the open court on 07th day of July-2018).

Sd/-

**(Smt. A.K.Naveen Kumari)
I Addl. District & Sessions Judge,
Bagalkot to sit at Jamakhandi.**