

KABR210003352025



**IN THE COURT OF THE II ADDL. SENIOR CIVIL JUDGE
AND JMFC, AT ANEKAL**

Dated this 8th day of April, 2025

PRESENT : SRI. MANJUNATHA M. B.A.(L), LL.B.
II Addl. Senior Civil Judge & JMFC,
Anekal.

O.S.No.262/2025

PLAINTIFF/S:

1. Smt. Venkatalakshamma
D/o late Smt. Kamamma,
aged about 56 years,
R/at Belathuru village,
Bidaralli Hobli, Bengaluru East Taluk,
Bengaluru Urban District.

And Others.

V/s

DEFENDANT/S:

1. Smt. Vijayalakshmi
D/o late Chowdamma

@ late Acchappa,
W/o Venugopal M.
aged about 55 years,
R/at No.3, 1st Main Road,
NGO layout, Kamakshipalya,
Bengaluru North,
Bengaluru – 560 079.

And Others.

PARTIES ON IA.NO.I

**Applicants /
Plaintiffs**

Smt. Venkatalakshamma & Others

V/s

Opponents /

Defendants No.5 & 6 Smt. Lalithamma & Another

ORDERS ON I.A.NO.I

I.A.No.I filed by plaintiffs under Order XXXIX Rule 1 and 2 r/w Sec.151 of CPC, praying to restrain defendants from alienating the suit schedule property till disposal of suit.

2. In support of application, plaintiff No.1 swear to an affidavit and pleaded that Thogata Mallappa was the propositus of joint family. Himself and his wife Smt. Ramakka died leaving behind their children Parvathamma,

Kamamma, Meenakshi, Venugopal and Lalithamma. They are the children of Kamamma. Defendant No.1 is the daughter of Chowdamma. Themselves and defendant No.1 to 5 constituted Hindu undivided joint family and suit schedule property is their joint family property. Thogata Mallappa purchased suit schedule property through registered Sale Deed dated 22.06.1959. After death of Thogata Mallappa, themselves and defendant No.1 to 5 were in joint possession of suit schedule property. Defendant No.4 started to misuse the plaint schedule property, hence, they demanded to effect partition and to allot their share, but, defendants by one or the other pretext postponed to allot their share and finally denied to allot their share. On verification, they learnt that defendant No.4 and Chowdappa sold suit schedule property in favour of defendant No.6 through registered Sale Deed dated 23.11.1977. On the basis of Sale Deed, revenue records were mutated in the name of defendant No.6. Later, defendant No.6 and his brother partitioned suit schedule property. On the basis of partition, suit schedule property was mutated in the name of defendant No.6 and his brother. Brother of defendant No.6 sold 10 guntas of land to defendant No.6 in the share allotted to him. Wife and children of Padmanabha Reddy sold 10 guntas of land to defendant No.7 and 06 guntas of land to defendant No.8. Defendant No.6 to 8 not

possess any valid right, title, defendant No.4 and Chowdappa sold property to deprive their legitimate share, hence, suit and application.

3. Defendant No.6 and 7 filed written statement and filed objection to the application and contended that plaintiffs not approached court with clean hands. Plaintiffs to gain wrongfully filed instant suit. Instead of filing suit for declaration, suit in instant form is not maintainable. Sy.No.41/1 measuring 02 acres 06 guntas of Singena Agrahara village, Sarjapura Hobli, was originally belonged to Subbarayappa, same was purchased by Thogata Mallappa and Chowdappa through registered Sale Deed dated 22.06.1959. After death of Thogata Mallappa, his only son Venugopal and Chowdappa being joint absolute owners sold Sy.No.41/1 measuring 02 acres 06 guntas in favour of defendant No.6 through registered Sale Deed dated 23.11.1977 for their family necessities. On the basis of Sale Deed, revenue records were mutated in the name of defendant No.6. Defendant No.6 and his brother Padmanabha partitioned property.

4. Brother of defendant No.6 sold 10 guntas of land in his share to defendant No.6 through registered Sale Deed dated 19.11.2002 and revenue records were transferred in the name

of defendant No.6. Wife and children of Padmanabha Reddy sold 06 guntas in old Sy.No.41/1, new Sy.No.41/5, on the basis of sale, defendant No.7 becomes the owner of 06 guntas in the suit schedule property. Plaintiffs not entitle for share as per Sec.6 of Hindu Succession Act. Property was sold prior to 20.12.2004, hence, daughters of Thogata Mallappa having no right to question the sale. Instant suit is filed after lapse of 47 years, hence, suit of plaintiffs is barred by limitation. They developed property by investing huge amount to extract money from them, suit and instant application is filed. Plaintiffs having no prima facia case, balance of convenience in their favour, hence, prayed to dismiss IA.No.I.

5. Perused notes of arguments filed by the learned counsel for plaintiffs. Heard learned counsel for defendant No.6 and 7 and perused materials placed before the court.

6. Now the points that would arises for consideration are ;

POINTS

1. Does plaintiffs made out prima facia case in their favour ?
2. Does plaintiffs will suffer inconvenience, if injunction is not granted as prayed in IA.No.I ?

3. Does plaintiffs will suffer irreparable injury, if injunction not granted as prayed in IA.No.I ?
4. What order ?

7. By considering the arguments of learned counsels and materials placed before the court, above points are answered as below ;

- | | |
|--------------|---|
| Point No.1 : | In the Negative |
| Point No.2 : | Does not survive for consideration |
| Point No.3 : | Does not survive for consideration |
| Point No.4 : | As per the final order for the following; |

:- REASONS :-

8. **Point No.1:-** According to plaintiffs, themselves and defendant No.1 to 5 are legal heirs of Thogata Mallappa. During lifetime of Thogata Mallappa, himself and Chowdappa purchased suit schedule property through registered Sale Deed. Themselves and defendants are in joint possession of suit schedule property. After death of Thogata Mallappa in the

year 1977, only son of Thogata Mallappa i.e., Venugopal and another joint owner i.e., Chowdappa sold property to defendant No.6 through registered Sale Deed. They are also having definite share in the suit schedule property. Plaintiffs admitted that only son of Thogata Mallappa and co-owner of property i.e., Chowdappa sold property in the year 1977. Sec.6(1) of Hindu Succession Act, debars daughters from claiming any share in the property which was alienated before 20.12.2004. Admittedly, son and wife of Thogata Mallappa i.e., brother and mother of plaintiffs and Chowdappa, who was the co-owners of suit schedule property, sold property in the year 1977. Plaintiffs being children of Kamalamma i.e., daughter of Thogata Mallappa, they cannot claim share in the suit schedule property as it was sold before 20.12.2004. At this stage, case of plaintiffs is doubtful, hence, this point answered ***in the Negative.***

9. **Point No.2 & 3:-** These points involves common question of facts, hence, taken together for discussion. When plaintiffs failed to establish prima facia case, question of balance of convenience and injury does not arise, accordingly, these points does not survive for consideration.

10. **Point No.4:-** For the reasons assigned to Point No.1 to 3, resulted in following :-

ORDER

IA.No.I filed by the plaintiffs under Order XXXIX Rule 1 and 2 of CPC is dismissed.

Consequently, exparte order granted in favour of plaintiffs stands vacated.

No order as to cost.

(Dictated to the Stenographer, transcribed by her, corrected and then pronounced by me in the open court, on this, **the 8th day of April, 2025**)

(MANJUNATHA M.)

II Addl. Senior Civil Judge & JMFC.,
Anekal.

