

KATK030136922022



**IN THE COURT OF THE III ADDL. CIVIL JUDGE &
JMFC., AT TUMAKURU**

Dated this 12th Day of December 2023

**Present: Sri.Vinay .V. Kundapur B.A.L , LL.B.,
III Addl.Civil Judge & JMFC,
Tumakuru.**

O.S. No.1048/2022

PLAINTIFFS : Chikkanna and another

/Vs/

DEFENDANTS : Chikkanna and others

INTERLOCUTORY APPLICATION No.I

APPLICANT : Chikkanna plaintiff No.1

(By Sri M.D.S. Advocate)

/Vs/

OPPONENTS : Chikkanna and others defendants

(By Sri K.S.S. Advocate)

1	Provision under which the application is filed	:	U/O 39 Rule 1 and 2 of CPC
2	Relief Sought for	:	Temporary Injunction
3	The date on which the application is filed	:	28-11-2022
4	The date on which the objection is filed by opponents	:	25-10-2023
5	The date on which the order was passed on the said application	:	12-12-2023

ORDER ON I.A No.I U/O XXXIX RULE 1 & 2 of CPC

This I.A No.I is filed by the applicant/plaintiff No.1 seeking an ad-interim order of temporary injunction restraining the defendants or their agents, servants or anybody acting on behalf of them from alienating the suit schedule property in any way, in any manner unless in due course of law fill pending disposal of the suit in the interest of justice.

2. In the accompanying affidavit it is stated that, the suit schedule property is plaintiffs ancestral property and it is originally belongs to one Ujjani S/o Doddakencha and he was in possession and enjoyment of the said property during his lifetime and all the revenue records with respect to the suit schedule

property like RR, IL, Old RTC etc., are in the name of said Ujjani S/o Doddakencha. After the death of said Ujjani, his sole son Chikkanna has succeeded to his estate and the said Chikkanna has got two children namely Gangaiah and Chikkanna and all of them were deceased.

The plaintiff further submits that, plaintiff are the legal heirs of Gangaiah and son of Chikkanna namely Chikkanna was not having children and hence they are the owners and they are in possession and enjoyment of the suit schedule property as per inheritance and accordingly they are having absolute right, title, possession and enjoyment over the suit schedule property.

The plaintiff further submits that, the defendants are the strangers to the suit schedule property and they are not having any right, title, possession and enjoyment over the suit schedule property and they have created the revenue documents with respect to suit schedule property and by virtue of that, they have included the suit schedule property along with their family properties in a suit in O.S. No. 268/2016 on the file of the Hon'ble I Addl. Senior Civil Judge at Tumakuru for partition and separate possession and they have compromised the said suit among

themselves on 03-12-2016 and the suit schedule property is the item No.11 in the said suit and hence the said compromise decree is not binding on their right and title over the suit schedule property.

The plaintiff further submits that, by virtue of the said compromise decree, the suit schedule property was divided among the defendants and accordingly the khatha and pahani was transferred into their names and by virtue of the said illegal khatha and pahani the defendants are attempting to interfere with their possession and enjoyment over the suit schedule property and they are also attempting to dispose them from the suit schedule property about one week back and they have also attempted to alienate the suit schedule property to some third person.

Further submits that, immediately they have given a complaint to the jurisdictional police station against the illegal act of the defendants, but the police have not taken their complaint and they have stated that, as the matter is civil in nature and hence they have to approach the civil court for the remedy and hence this application for ex parte order of

temporary injunction against the defendants. Hence plaintiff pray for allow of his application in the interest of justice.

3. On the contrary, defendants have appeared through their counsel and filed written statement along with memo for adopting the written statement as objection to the IA U/o 39 Rule 1 & 2 of CPC. The defendants have denied the case of the plaintiff, defendants have taken specific contention that, the suit schedule property originally land bearing 46/6 and 46/3 of Sangalapura Village, Hebbur Hobli, Tumakuru Taluk. The afro mentioned land which was purchased by the One Rangaiah S/o Cihkkanna of Sangalapura village, Hebbur Hobli, Tumakuru Taluk from its lawful owner Muniyamma W/o Chikkanna @ Kochaiah and also one Kenchaiah S/o Ujjaiah towards an sale consideration amount of Rs.100/- towards the land bearing sy.no. 46/6 an extent of 0-24 guntas and in Sy.No. 46/3 towards an extent of 27 and ½ guntas under the registered sale deed dated 20-08-1954 in presence before the sub-registrar at Tumakuru. Eversince from the date of purchased the said lands which are part and parcel of the suit schedule property the afro mentioned Rangaiah S/o Chikkanna was in physical possession and enjoyment of the suit schedule property

by having its absolute right, title over the same. Further subsequently the said sy.nos which is phoded as Sy.No. 46/6B and 46/3B towards an extent of 0-24 guntas and 0-27 and ½ guntas in total extent as shown in the RTC as 1 acre 15 guntas. Under the said fact and circumstances the said Rangaiah S/o Chikkanna will become the absolute owner towards the said land i.e., the part and parcel of the suit schedule since from the year 1954 i.e., from the date of registered sale deed.

Further defendants submitted that, after the demise of the said Rangaiah, the only son of Rangaiah one Gangaiah S/o Late Rangaiah and family members have sold the Land bearing its Sy.No. 46/6B towards an extent of 0-24 guntas in favour of one Smt. Gangamma W/o Gangaiah of Sangalapura Village, Hebbur Hobli, Tumakuru Taluk under the registered sale deed dated 07-12-1990. In turn the remaining extent of 0-31 guntas which is stands continued in the name of Rangaiah S/o Chikkanna.

The defendants further submitted that, the legal representatives of the said late Rangaiah S/o Chikkanna have filed the suit against this defendant No.1 to 3 and also other persons on the file of the Hon'ble I Addl. Civil Judge Senior Division at Tumakuru in O.S. No.268/2016 including the suit schedule property land

bearing Sy.No. 46/6B of Sangalapura Village, Hebbur Hobli, Tumakuru Taluk. In the said suit which was compromise between the aggrieved parties and the suit schedule property which is allotted to the defendants No.1 to 3 towards an extent of 00-10 guntas each in favour of 1st and 3rd defendants and also 0-11 guntas was allotted the 2nd defendant which is the part and parcel of the suit schedule property. In view of the said compromise decree all the revenue documents which are made out in the name of this defendants No.1 to 3 and also the defendants No.1 to 3 are in physical possession and enjoyment of over the suit schedule property by having its absolute right, title interest over the same and also mutation entries which is accepted under the MR No. H17/2018-19.

Defendants further submitted that, the suit schedule property which was alienated in the year 1954 itself which is almost more than 70 years. Still today the plaintiffs have not challenged the said sale deed stands in the name of Rangaiah S/o Chikkanna. The said registered sale deed is not questioned by these plaintiffs and as well as no other persons. Under the said facts and circumstances without question the said sale deed there is no such title was passed in favour of these plaintiffs. Without having any title over

the suit schedule property the suit for declaration is obviously not maintainable.

Defendants further submitted that, the part and parcel of the suit schedule property which was alienated by the one Gangaiah S/o Rangaiah towards an extent of 0-24 guntas in the year 1990. Under the said facts and circumstances the said sale deed is not questioned by the any one till today. Under the said facts and circumstances the suit itself is not maintainable. The suit is hopelessly barred by law of limitation and there is no cause of action for this alleged suit filed by plaintiffs. The O.S. No. 268/2016 not challenged by this plaintiffs still today and moreover the plaintiffs who are all strangers to the suit schedule property. The plaintiffs without being the actual physical possession over the suit schedule property the suit itself is not maintainable against the defendants. On all these grounds defendants prays to dismiss the application.

4. Heard and perused material available on record.

5. On perusal, following points arise for my consideration:

- i: Whether the plaintiff has made out prima facie case ?

- ii. Whether balance of convenience lies in favour of plaintiff ?
- iii: Whether plaintiff would be put to irreparable loss and hardship if the injunction is not granted ?
- iv: What order ?

6. I answer the above points as follows;

**Point No.i : Partly in the Affirmative,
Point No.ii : Partly in the Affirmative,
Point No.iii : Partly in the Affirmative,
Point No.iv : As per Final Order
for the following;**

REASONS

7. **Point No.i:** The plaintiffs have instituted this suit against the defendants for the relief of declaration and permanent injunction. The present application is filed to restraining the defendants or their agents, servants or anybody acting on behalf of them from alienating the suit schedule property in anyway in any manner unless in due course of law till pending disposal of the suit in the interest of justice.

8. In support of the application the plaintiffs have produced number of documents, i.e., certified copies of G Tree, ordersheet of

O.S. No. 268/2016, Sale deed, Record of Rights, Encumbrance certificate, RTC Extract, Mutation Register etc.

9. In support of their contention the defendants have produced xerox copies of sale deeds, RTC Extracts, M.R. Extracts, Compromise decree in O.S. No. 268/2016.

10. On the other side the defendants submits that, suit schedule property land bearing Sy. No. 46/3 and 46/6 were purchased by the Rangaiah S/o Chikkanna from its lawful owner Muniyamma and Kenchiah. The land bearing Sy.No. 46/6 measures 24 guntas and in Sy.No.46/3 towards an extent of 27 gunatas and ½ guntas under registered sale deed dated 20-08-1954. The Rangaiah was in possession and enjoyment over the suit schedule property and after his demise his family members have sold the land bearing Sy. No. 46/6B towards an extent of 24 guntas to one Gangamma under the registered sale deed dated 07-12-1990. The remaining extent which is stands continued in the name of Rangaiah. Further defendant submits that, the said Rangaiah has filed suit against the defendant No.1 to 3 and also against other persons before I Addl. Senior Civil Judge, Tumakuru, the said compromise between the parties. To prove the same the defendant has produced documents

No.16 before the court. As per the compromise decree all the revenue documents are made in the name of this defendant No.1 to 3 and they are in physical possession and enjoyment of the suit schedule property. Hence defendants prays for the court to reject the application.

11. On perusal of plaintiff's written statement and IA filed by plaintiff and objection filed by the defendants to the application U/o XXXIX Rule 1 & 2 of CPC and documents produced by plaintiff and defendants, at this stage prima facie shows that there is no dispute regarding identification of the property. Moreover the plaintiff is not a party in O.S. No. 268/2016. So the suit of the plaintiff and other allegations of the parties will be decided only on full fledged trial, until then the suit property has to be protected till the final disposal of the suit. Otherwise it leads to multiplicity of litigations. Hence this Court is of the opinion that, both the parties have to maintain the status-quo till final disposal of suit on merits only on full fledged trial.

In this regard, this court relying on the decision of **Hon'ble high court of Karnataka reported in ILR 2004 KAR Page**

4076 (Fakirasab V/s. Syedusab and Others) in which it is held that:

(B) CIVIL PROCEDURE CODE, 1908- ORDER 39 RULES 1 And 2- OBJECT OF- While considering an application for grant of temporary injunction, the right and need of respective parties should be considered and the suit property also should be protected and preserved so that, if ultimately, the plaintiff who is the initiator of the suit, succeeds in the suit, he would not be put to irreparable and un compensable loss. The object is to keep the property in status-quo so that it would be available to the plaintiff if she ultimately succeeds in the suit.

12. In view of above said decision of Hon'ble High Court of Karnataka and upon hearing the arguments of both the sides of their respective counsel, at this juncture this Court is of the opinion that, the suit property has to be protected till final disposal of the suit and order to avoid further complications, plaintiff and defendants have to maintain status-quo of the suit property till final disposal of the suit. Hence this Court answers point No.i to iii **partly in the affirmative.**

13. Point No.iv : In view of findings on point No.i to iii, this courts proceed to pass the following:

ORDER

The IA filed by the plaintiff U/o XXXIX Rules 1 & 2 of CPC is partly allowed.

The plaintiff and defendants are hereby directed to maintain status-quo with respect to suit schedule property till final disposal of the suit.

No order as to cost.

*(Dictated to the stenographer directly on Computer, typed by her, corrected, signed and then pronounced by me in the open court on **12th Day of December 2023**).*

**(VINAY .V. KUNDAPUR)
III Addl. Civil Judge & JMFC.,
TUMAKURU.**