

**IN THE COURT OF THE SENIOR CIVIL JUDGE
& ADDL. MACT, BAILHONGAL.**

Dated this the 5th day of January 2022

**PRESENT: Smt. Usharani. R. B.A.L.,
LL.M.,**

Senior Civil Judge and Addl. MACT.,
Bailhongal.

Original Suit No. 16/2018

Sri Basappa S/o Basavanthappa
Pattanshetty,
Age: 62 years, Occ: Agriculture,
R/o.: Pattihal K B, Tq:Bailhongal,
Dist:Belagavi.

.....Petitioner

(By S.B.P Adv.)

-Vs-

1) Shri. Yallappa Basavanthappa Pattanshetty
Age:58 years, Occ:Job,
R/o.: Pattihal K. B., Tq:Bailhongal,
Dist:Belagavi.

2) Shri. Gangappa Basavanthappa
Pattanshetty
Age:58 years, Occ:Job,
R/o.: Pattihal K. B., Tq:Bailhongal,
Dist:Belagavi.

3) Shri. Veerupaxappa Basavanthappa
Pattanshetty
Age:45 years, Occ:Agriculture,
R/o.: Pattihal K. B., Tq:Bailhongal,

Dist:Belagavi.

4) Shri. Gurusiddappa Basavanthappa
Pattanshetty

Age:42 years, Occ:Teacher,
R/o.: Pattihal K. B., Tq:Bailhongal,
Dist:Belagavi.

5) Smt. Basavanneppa W/o. Basappa Hakari
Age:70 years, Occ:Household work,
R/o.: Hirebellikatti, Tq:kittur/Bailhongal,
Dist:Belagavi.

6) Smt Shantavva W/o Balappa Karikatti,
Age:56 years, Occ:Household work,
R/o.: Pattihal K. B., Tq:Bailhongal,
Dist:Belagavi.

7) Smt Tayavva W/o. Shivapa Sarabani
Age:54 years, Occ:Household work,
R/o.: Aravalli, Tq:Bailhongal,
Dist:Belagavi.

8) Smt Kasturavva W/o Basanbouda Patil
Age:51 years, Occ:Household work,
R/o.: Chachadi, Tq:Soundatti,
Dist:Belagavi.

9) Shri Balappa S/o Channabasappa Karikatti
Age:60 years, Occ:Agriculture,
R/o.: Pattihal K. B., Tq: Bailhongal,
Dist:Belagavi.

10) Smt Shrikantevva W/o Shantinath Huddar
Age:70 years, Occ:Household work,
R/o.: Patagundi, Tq: Gokak,
Dist:Belagavi.

11) Shri Ulavappa S/o Veerabhadrapa
Guralakatti
Age:60 years, Occ:Agriculture,
R/o.: Pattihal K. B., Tq: Bailhongal,

Dist:Belagavi.

12) Shri Shakargouda S/o Devendarappa Patil
Age:42 years, Occ:Agriculture,
R/o.: Pattihal K. B., Tq: Bailhongal,
Dist:Belagavi.

13) Shri Bhimaretavva W/o Nagappa
Manigappanavar(Kolakar)
Age:55 years, Occ:Household work,
R/o.: Pattihal K. B., Tq: Bailhongal,
Dist:Belagavi.

14) Smt Laleeta W/o Maddeppa
Mannigappanavar (Kolakar)
Age:32 years, Occ:Agriculture,
R/o.: Pattihal K. B., Tq: Bailhongal,
Dist:Belagavi.

15) Shri Channayya S/o Basalingayya Pujar
Age:32 years, Occ:Agriculture,
R/o.: Pattihal K. B., Tq: Bailhongal,
Dist:Belagavi.

16) Smt Shaila W/o Dundappa Katti (Halemani)
Age:55 years, Occ:Household work,
R/o.: Pattihal K. B., Tq: Bailhongal,
Dist:Belagavi.

17) Shri Balappa S/o Basappa Hunashikatti
Age:45 years, Occ:Agriculture,
R/o.: Pattihal K. B., Tq: Bailhongal,
Dist:Belagavi.

.....Respondents

(D1, D3, D4 by Sri. C.S.C/S.V.S., Advocate
D2 By Sri. M.V.K., Advocate,
D5 to D8 By Sri.S.Y.P., Advocate,
D9 By Sri.S.J.B., Advocate,
D10 : Exparte,
D11 to D17 By Sri.R.S.D., Advocate)

INTERLOCUTORY APPLICATION No.XIV

Applicant/Defendant
Nos.1, 3
and 4:

1) Shri. Yallappa Basavanthappa
Pattanshetty, Age:58 years, Occ: Job,
R/o.: Pattihal K. B., Tq:Bailhongal,
Dist:Belagavi.

2) Shri. Veerupaxappa Basavanthappa
Pattanshetty, Age:45 years,
Occ:Agriculture, R/o.: Pattihal K. B.,
Tq:Bailhongal, Dist:Belagavi.

3) Shri. Gurusiddappa Basavanthappa
Pattanshetty, Age:42 years, Occ:Teacher,
R/o.: Pattihal K. B., Tq:Bailhongal,
Dist:Belagavi.

// Vs. //

Opponent/plaintiff:

Sri Basappa S/o Basavanthappa
Pattanshetty, Age: 62 years, Occ:
Agriculture, R/o.: Pattihal K B,
Tq:Bailhongal, Dist:Belagavi.

ORDER ON IA No.XIV

IA No.XIV is filed by the defendant Nos.1, 3 and 4 under Order XXXIX Rule 1 and 2 of CPC seeking injunction against the plaintiff from interfering in the possession and cultivation of the suit property in RS No.56 measuring 18 acres 25 guntas.

2. In the accompany affidavit defendant no 3 has sworn to the fact that RS No.56

exclusively belongs to defendant No.1, 3 and 4. There was a partition suit filed in O.S. No.30/2009 and in the Lok Adalat order was passed. Plaintiff has not challenged this order and plaintiff do not have any right, title or interest over the suit schedule property. The said decree is not challenged from 2009. In fact the suit property is the property acquired by defendant Nos.1, 3 and 4 and plaintiff has no right in the same. Even there was a revenue proceedings before 2009 initiated by the plaintiff and Basavanthappa and it has been rejected. In the year 1998 there was mutual partition and even in the partition plaintiff realized that he has no share. Annasaheb is the owner of suit property and he has admitted the ownership of defendant Nos.1, 3 and 4. This property is having higher value and the defendants have improved the land by borrowing loan of Rs.30 lakhs. They have grown sugarcane out of their own hard earnings. Further in the trial court defendants have obtained the suit property under adverse possession and they are in exclusive possession. Plaintiff has not challenged this order and therefore now the suit is filed which amounts to contempt of court. Though the suit

is posted for evidence IAs have been filed. Therefore, it is necessary to allow the IA no 14.

3. The objections to IA No.XIV has been filed by the plaintiff on the ground that RS No.56 is joint family property of the family of the plaintiff. During the life time of Basavanthappa the legal rights were acquired and after his death the sons and daughters of the deceased Basavanthappa acquired rights. Therefore, RS No.56 is a joint family property of plaintiff and defendants. The compromise decree in O.S. No.30/2009 was obtained colludingly by the defendant Nos.1, 3 and 4 to deprive the share of the plaintiff. But till date suit property is joint family property of the plaintiff and defendants. The defendant Nos.1, 3 and 4 do not have absolute right over the suit property. Further there is no prima facie case and no merit in IA.

4. Based upon the aforestated facts the following points arise for my consideration:

- 1) Whether the defendant no 1, 3 and 4 prove that they have got a prima facie case in thier favour ?
- 2) Whether the defendants prove that balance of convenience tilts in their

favour ?

3) Whether the defendants would be put to irreparable loss and injury in case IA 14 is not allowed ?

3) What order ?

5. Heard arguments and perused documents on record.

6. My answers to the above points are as under:

Point No.1 : In the negative.

Point No.2 : In the negative.

Point No.3 : In the negative.

Point No.4 : As per final order for the following

REASONS

7. **Point No.1:-** Law relating to grant or refusal to grant temporary injunction has been enunciated by the Honble Supreme Court of India and Honble High Court of Karnataka in a plethora of cases. The court while exercising its discretion applies the following tests-(i) whether the plaintiff has a prima facie case; (ii) whether the balance of convenience is in favour of the plaintiff; and (iii) whether the plaintiff would suffer an irreparable injury if his prayer for interlocutory injunction is disallowed. The decision whether or not to grant an

interlocutory injunction has to be taken at a time when the existence of the legal right assailed by the plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. Relief by way of interlocutory injunction is granted to mitigate the risk of injustice to the plaintiff during the period before that uncertainty could be resolved. The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial.

8. Keeping in mind the well settled legal principles regarding granting or refusal for granting Temporary Injunction enunciated in these decisions, the factual aspects of the case has to be embarked upon.

9. Both the parties have produced the documents in support of their case. Series of RTC extracts are produced. This suit is filed in the year 2019 and evidence is partly

commenced. Plaintiff has examined himself as Pw 1 and got marked many documents.

10. According to the defendant no 3 RS No.56 exclusively belongs to defendant No.1, 3 and 4. There was a partition suit filed in O.S. No.30/2009 and in the Lok Adalat order was passed. Plaintiff has not challenged this order and plaintiff do not have any right, title or interest over the suit schedule property. The said decree is not challenged from 2009. In fact the suit property is the property acquired by defendant Nos.1, 3 and 4 and plaintiff has no right in the same. Even there was a revenue proceedings before 2009 initiated by the plaintiff and Basavanthappa and it has been rejected. In the year 1998 there was mutual partition and even in the partition plaintiff realized that he has no share. Annasaheb is the owner of suit property and he has admitted the ownership of defendant Nos.1, 3 and 4. This property is having higher value and the defendants have improved the land by borrowing loan of Rs.30 lakhs. They have grown sugarcane out of their own hard earnings. Further in the trial court defendants have obtained the suit property under adverse

possession and they are in exclusive possession. Plaintiff has not challenged this order and therefore now the suit is filed which amounts to contempt of court.

11. Per contra it is the case of the plaintiff that RS No.56 is joint family property of the family of the plaintiff. During the life time of Basavanthappa the legal rights were acquired and after his death the sons and daughters of the deceased Basavanthappa acquired rights. Therefore, RS No.56 is a joint family property of plaintiff and defendants. The compromise decree in O.S. No.30/2009 was obtained colludingly by the defendant Nos.1, 3 and 4 to deprive the share of the plaintiff. But till date suit property is joint family property of the plaintiff and defendants. The defendant Nos.1, 3 and 4 do not have absolute right over the suit property.

12. Under this IA injunction is sought as against RS No.56 measuring 18 acres 25 guntas. Hence only documents pertaining to this property is being discussed.

13. The plaintiff has produced RTC extracts of the suit properties. Defendant has also produced many documents.

14. On perusal of the RTC extract of RS No.56 pertaining to the year 2017-18 it is standing in the name of Pattanshetti Yallappa Basavanthappa who is defendant No.1. It is also standing in the name of defendant Nos.3 and 4. The RTC extracts are also shows that it is entered on the basis of order passed in OS No.30/2009. Further plaintiff has also mutation register extract of Sy.No.56 is also shows that as per MR No.72/2008 the name of defendant Nos.1, 3 and 4 is mutated on the basis of court order in OS No.30/2009. Earlier it was in the name of Inamdar Annasaheb Devendrappa. Another mutation register extract shows that lein is created in favour of Primary Agricultural Cooperative Society of Khodanpura by the defendant No.1. Writ Petition No.13839/1980 is also filed by defendant No.1 against the Land Tribunal in respect of order passed. Certificate issued by Village Accountant is produced which shows that in RS No.56 belonging to Yallappa Basavanthappa Pattanshetti sugarcane is grown. Kabuli patra dated

19.03.2013 is also produced it shows that there was consent deed executed. Plaintiff has got marked as many as 58 documents in his examination in chief and the above cited documents are also marked.

15. Plaintiff has produced copy of the compromise decree passed in OS No.30/2009, it was filed by defendant No.1, 3, 4 against defendant Annasaheb Devendrappa Inamadar in respect of RS No.56 and as per the compromise defendant has given up right in favour of the plaintiff. Certified copy of plaint in OS No.30/2009 shows that suit was filed seeking adverse possession in respect of RS No.56. Yield certificate is also produced is shows that there is sugarcane crop.

16. Defendants have produced mutation partition deed dated 06.05.1994, mutation register extract, the original sale deed executed by Basavantha Yallappa Pattanashetti i.e., defendant in favour of Balappa Channabasappa Karikatti in respect of House No.88. Another Sale deed Pertaining to RS No.55/5 produced. MR No.2607 of 15.06.1994 shows that there was partition in the family

between Basavanthappa Pattanshetti and his daughter in respect of Sy.No.55. MR No.2991 shows that on the basis of Kabuli patra mutation was effected, wherein Shantavva W/o Balappa Karikatti has given up right in favour of her husband.

17. The instant suit is filed by the plaintiff Basappa Pattanashetti seeking relief of partition and separate possession of suit schedule property and for declaration that MR No.2607 and 2991 are not binding on the share of the plaintiff. OS no. 119/1989 is not binding the share of the plaintiff.

18. On perusal of the documents on record it is apparent that the suit is filed by the plaintiff seeking relief of partition and separate possession also for declaration that mutation entries regarding partition and consent deed is not binding on him.

19. Evidently in respect of RS no 56 OS No.30/2009, was filed by the defendant No.1, 3 and 4 against defendant Annasaheb Devendrappa Inamadar in respect of RS No.56 and as per the compromise defendant has

given up right in favour of the plaintiff. Whether the said judgments and decrees in Os no. 30-2009, whether the kabooli patra and apsat watni/ mutal partition is legal or not and whether it is also are binding on the plaintiff or not is a matter which requires to be considered after trial. Further according to the defendant plaintiff has given up his right.

20. Without proceeding with the trial it cannot be ascertained that the said long standing entries in the revenue records are not correct. At this stage when this court is considering I.A court cannot venture into a mini trial. Without trial the court cannot come to the conclusion that the judgment and decree passed in earlier case and mutation entries are not binding. Therefore without trial the same cannot be ascertained and it is also the merit of the case.

21. There is already a compromise decree in force in respect of RS no 56. But according to the plaintiff the said land was in possession of the family since the time of his father. The burden is heavy on the plaintiff to prove that aspect. To prove that full fledged trial is necessary. Whether the RS no 56 has become

absolute property of the defendants is also to be considered only after trial. The contentions that the plaintiff has already given up his rights and other aspects needs to be proved in trial. Thus a this stage there is no prima faice case.

22. Further this suit is filed for partition and separate possession. If the plaintiff succeeds in proving the case he would only get a share in the suit properties. But if the defendants prove that they have become absolute owners of the RS No.56 then automatically plaintiff will not get any rights over the suit property. Revenue records are standing in the name of defendants already.

23. According to the defendants there is compromise decree drawn. At this stage there is no prima facie case to grant the relief of permanent injunction. The defendants are yet to prove that they have exclusive rights over the suit property RS no 56 and all revenue entries are legal. In the present case since there is serious dispute as to the rights over the nature of the suit property in RS no 56.

24. Thus defendants have not proved that, there is a prima facie case in their favour and I

answer point No.1 in the negative.

25. **Point No.2 and 3**:- The defendant Nos.1, 3 and 4 have not proved prima facie case. The grant of interim injunction is both temporary and discretionary. The court has to find out whether the case is frivolous or vexatious. The balance of convenience also should lie in favour of the defendant Nos.1, 3 and 4 to be entitled for the injunction. In the present case since there is serious dispute as to the rights over the suit property no 56 and also its nature balance of convenience does not tilt in favor of the defendant Nos.1, 3 and 4 and they will not be put to irreparable injury and disadvantage. Thus point no 2 and 3 are answered in the negative.

26. **Point No.4**:-In view of my findings on point No.1 to 3, I proceed to pass the following:

ORDER

The application IA no XIV filed by the defendant no 1, 3 and 4 U/o.39, Rule 1 and 2 R/w. sec. 151 of CPC., is hereby dismissed.

No order as to costs.

(Dictated to the stenographer, transcribed and computerized by her, then corrected and pronounced by me in the Open Court, on this the 5th day of January 2022)

(Smt.Usharani.R.)
Senior Civil Judge, Bailhongal