

**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

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

(By S.B.P Adv.)

-Vs-

- Respondents: 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.

(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.XIII

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

// Vs. //

Opponent/d 1) Shri. Yallappa Basavanthappa
efendant Pattanshetty, Age:58 years, Occ:Job,
Nos.1 to 9: R/o.: Pattihal K. B., Tq:Bailhongal,
Dist:Belagavi and others

ORDER ON IA No.XIII

IA No.XIII is filed by the plaintiff under Order XXXIX Rule 1 and 2 of CPC seeking injunction against the defendant Nos.1 to 9 in enjoyment of the suit schedule properties.

2. In the accompany affidavit it is sworn to the facts by the plaintiff that, the suit is filed for partition and separate possession. Plaintiff is in joint possession and enjoyment of the suit schedule property and in RS No.56. There is dispute regarding harvesting of sugarcane crop. He had filed IA No.VI. But IA No.VI came to dismissed with a direction to the defendant no 1, 3 and 4 to furnish the details of the sugarcane crop and also weigh bills and other particulars. But till date the defendants have not furnished

the said details and they are trying to interfere in the joint possession of the suit schedule property. The defendants are also causing obstruction in the agricultural work on day today basis. Therefore, injunction is necessary.

3. Defendant No.9 has filed objections to IA No.XIII on the ground that IA is not maintainable. In fact the plaintiff has given up his right along with other defendants and only thereafter the defendant Basavantappa Yallappa Pattanashetty on 15-04-1994 executed a relinquishment deed in favour of defendant No.6 his daughter on 15.06.1994 giving up 09 acres of the suit property. Thereafter, defendant No.9 had financial difficulty and therefore he offered for 09 acres for sale. Thereafter Rs.50,000/- was given and property was purchased. Defendant is daughter of Basavantappa and defendant No.6 is the wife of defendant No.9. Mutation is also effected. Mutation is not challenged. Defendant no 9 is in possession of the said property and there is no question of interference. Thus instead of executing sale deed they have got it mutually partitioned and on the consent right has been given up. The other defendants have relinquished the right infavour of defendant No.6. Thereafter, defendant No.6 executed Kabuli patra in favour of

defendant No.9. MR No.2991 is certified in this regard. The same has not been challenged till date. Thereafter, defendant No.9 has purchased the said property and it is his self acquired property and he has already sold 04 acres in favour of defendant No.10. The sale deed is not challenged. There is no interference in the possession. Defendant No.9 is in possession of part of the suit property. The plaintiff was never in possession of the suit schedule property and there is no question of granting IA.

4. Defendant no 1, 3 and 6 have filed objections to this IA on the ground that the plaintiff instead of leading evidence is filing application one after the other. There was a compromise decree in O.S. No.39/2009 wherein in the Lok Adalat order was passed. The said award is not challenged by the plaintiff. There was decree passed in 2009 which is not questioned till date. Plaintiff has no right over the suit schedule property. Defendant Nos.1 ,3 and 4 had borrowed Rs.30.00 lakhs loan and improved the land. They had grown sugarcane crop which is ready for harvest. Plaintiff intend to cause loss to the defendant. Application was filed to get a receiver appointed, but no order was passed. Every year plaintiff filed similar IA. Plaintiff has no right over

the suit property and therefore, IA deserves to be dismissed.

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

1) Whether the plaintiff proves that he has got a prima facie case in his favour ?

2) Whether the plaintiff prove that balance of convenience tilts in his favour ?

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

4) What order ?

6. Heard arguments and perused documents on record.

7. 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

8. **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 in 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.

9. 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.

10. Plaintiff seeks for an order of injunction against the defendant claiming that he is in joint possession and enjoyment of the suit schedule property and in RS No.56. There is dispute regarding harvesting of sugarcane crop. He had filed IA No.VI. But IA No.VI came to dismissed with a direction to the defendant no 1, 3 and 4 to furnish the details of the sugarcane crop and also weigh bills and other particulars. But till date the defendants have not furnished the said details and they are trying to interfere in the joint possession of the suit schedule property.

11. Per contra, according to the defendants the plaintiff has given up his right along with other defendants and only thereafter the defendant Basavantappa Yallappa Pattanashetty on 15-04-1994 executed a relinquishment deed in favour of defendant No.6 his daughter on 15.06.1994 giving up 09 acres of the suit property.

12. It is stated that, the defendant No.6 executed Kabuli patra in favour of defendant No.9. MR No.2991 is certified in this regard. The same has not been challenged till date. Thereafter,

defendant No.9 has purchased the said property and it is his self acquired property and he has already sold 04 acres in favour of defendant No.10. The sale deed is not challenged.

13. According to the defendant no 1, 3 and 6 there was a compromise decree in O.S. No.39/2009 wherein in the Lok Adalat order was passed. The said award is not challenged by the plaintiff. There was decree passed in 2009 which is not questioned till date. Plaintiff has no right over the suit schedule property.

14. In order to prove of prima facie case plaintiff has produced RTC extracts of the suit properties. Under this IA injunction is sought as against RS No.56 measuring 18 acres 25 guntas. 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, 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 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. At this stage there is no prima faice case.

22. Further this suit is filed for partition and separate possession. Thus being the case even for the sake of arguments it is considered that defendants enter their names in the records of the suit properties the vested right will not be taken away. If the plaintiff succeeds in proving the case he would only get a share in the suit properties. Thus even if the name of defendants are entered in respect of the suit lands, no prejudice will caused.

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 plaintiff is yet to prove that he has a right over the suit property RS no 56 and all revenue entries are illegal. In the present case since there is serious dispute as to the rights over the nature of the suit property in RS no 56 and since there is already a judgment of competent court at this stage there can be no opinion that the judgment is not binding.

Moreover as per the say of the plaintiff he is in joint possession of the suit property in RS no 56 also. Thus he himself claims to be a coparcener. It is settled principle of law that no injunction can be granted against a coparcener. Thus plaintiff has not proved that, there is a prima facie case in his favour and I answer point No.1 in the negative.

24. **Point No.2 and 3:-** The plaintiff has not proved prima facie case. The grant of interim injunction is both temporary and discretionary. The court has to find out whether the plaintiffs' case is frivolous or vexatious. The balance of convenience also should lie in favour of the plaintiff, 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. Since there is already a judgment of competent court , where compromise decree was passed in favor of the defendant no 1, 3 and 4 balance of convenience does not tilt in favor of the plaintiff and he will not be put to irreparable injury and disadvantage. Thus, the point no 2 and 3 are answered in the negative.

25. **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 XIII filed by the plaintiff 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 him, 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