

KABG300004222023



**IN THE COURT OF SENIOR CIVIL JUDGE, BAILHONGAL
AT; BAILHONGAL.**

PRESENT:

Shri. Ravi Babu Chawan
B.A.LL.B (Spl.)
Senior Civil Judge, Bailhongal.

O.S. No.106/2023

Dated this the 26th Day of July, 2024

1) Shri. Yallappa Siddappa Garajur,
Age: 65 years, Occ: Agriculture,
R/o: Turakarashigihalli, Tq: Bailhongal.

2) Smt. Yallavva W/o Ningappa Budihal,
Age: 50 years, Occ: Household work,
R/o: Shiragaapur, Tq: and Dist: Dharwad.

.....Plaintiffs

(By Sri. S.V.S., Advocate)

-Vs.

1) Shri. Madiwalappa S/o Siddappa Garjaur,

Age: 45 years, Occ: Agriculture,
Occ: Turakarashigihalli, Tq: Bailhongal.

2) Shri. Girimallappa S/o Basappa Garajur,
Age: 50 years, Occ: Nil
R/o: Turakarashigihalli, Tq: Bailhongal.

3) Smt. Shantaww S/o Yallappa Garajur,
Age: 50 years, Occ: Household work,
R/o: Turakarashigihalli, Tq: Bailhongal.

4) Shri. Girimallappa S/o Yallappa Garajur,
Age: 50 years, Occ: Agriculture,
R/o: Turakarashigihalli, Tq: Bailhongal.

5) Shri. Nagappa S/o Yallappa Garajur,
Age: 45 years, Occ: Agriculture,
R/o: Turakarashigihalli, Tq: Bailhongal.

6) Smt. Anasuya W/o Bhimappa Garajur,
Age: 48 years, Occ: Household,
R/o: Madanbhavi, Tq: Bailhongal.

7) Smt. Jyoti D/o Bhimappa Garajur,
Age: 19 years, Occ: Household,
R/o: Madanbhavi, Tq: Bailhongal.

8) Sri. Bharamappa Yallappa Garajur,
Age: 40 years, Occ: Agriculture,
R/o: Turakarashigihalli, Tq: Bailhongal.

9) Smt. Yallawwa W/o Girimallappa Araganji,

Age: 50 years, Occ: Household,
R/o: Sangolli, Tq: Bailhongal.

10) Smt. Mallawwa W/o Pundalik Kotabagi,
Age: 45 years, Occ: Household,
R/o: Kadasgatti, Tq: Bailhongal.

11) Smt. Gurubayavva W/o Fakirappa Goravanakolla,
Age: 48 years, Occ: Household,
R/o: Kenganur, Tq: Bailhongal.

12) Sri. Basappa S/o Ramappa Kumbarganavi,
Age: 68 years, Occ: Agriculture,
R/o: Madanbhavi, Tq.& Dist: Dharwad

13) Sri. Mallappa S/o Ramappa Kumbarganavi,
Age: 65 years, Occ: Agriculture,
R/o: Madanbhavi, Tq.& Dist: Dharwad

14) Sri. Shivappa S/o Yallappa Kumbarganavi,
Age: 70 years, Occ: Agriculture,
R/o: Madanbhavi, Tq.& Dist: Dharwad

..... Defendants

(By Sri. B.N.P., Advocate for D1, D3, D5, D8, D10 & D11)

(By Sri. C.S.C., Advocate for D2 & D9)

(D-4: Exparte)

(By Sri. V.G.K., Advocate for D6, D7, D12 to D14)

PARTIES TO IA-I AND II

1) Shri. Yallappa Siddappa Garajur,
Age: 65 years, Occ: Agriculture,
R/o: Turakarashigihalli,
Tq: Bailhongal and another

.... Applicants/plaintiffs

- Vs.-

1) Shri. Madiwalappa S/o Siddappa Garjaur,
Age: 45 years, Occ: Agriculture,
Occ: Turakarashigihalli,
Tq: Bailhongal and others

..... Opponents/Defendants**ORDER ON I.A.No. I and II**

Since both IA No.I and II involve common question connected to each other, both IA's are dealt together.

IA No.I is filed under Order 39 Rule 1 and 2 R/w. Section 151 of CPC by the Applicants/Plaintiffs against the defendants Nos.1, 2 and 5 praying for an Ad-interim order

restraining them from alienating the suit schedule properties until the disposal of the suit.

IA No.II is filed under Order 39 Rule 1 and 2 of CPC by the Applicants/plaintiffs against the defendant No.1,2 and 5 praying for an Ad-interim order restraining the them from making any sort of obstruction to the peaceful possession and enjoyment of suit land by the plaintiffs.

2. Brief facts of the case are as follows:

In the plaint as well affidavits filed in support of the IAs, the plaintiffs have contended that, the suit properties are the ancestral properties of plaintiffs and defendant No.1 to 3. The plaintiffs are having 1/3rd share in the suit properties. Originally suit properties are belonged to propositus namely Nagappa. After his demise plaintiffs and defendants are in possession and enjoyment of the suit

properties. There no partition has taken place between plaintiffs and defendants till date. It is alleged that, the defendant No.1, 2 and 5 colluding each other have obtained compromise decree in O.S. No.78/2021 without arrayed the plaintiffs and defendant No.3 to 11 as parties to the said suit. Based on the collusive compromise decree defendant Nos.1, 2 and 5 got entered their names in revenue records of the suit properties. Therefore the compromise decree and revenue entries based said decree are not binding on the plaintiffs. It is alleged that the defendant Nos.1, 2 and 5 are planning to alienate the suit properties and thereby cause harassment and loss to the plaintiff. It is also alleged that the defendant Nos.1, 2 and 5 causing obstruction with peace full possession and enjoyment of plaintiffs over the suit properties Hence, sought for interim temporary injunction.

3. The defendant No.2 has filed his written statement and same is adopted as objections to IA1 and 2. In written statement defendant No.2 has contended that the suit properties were owned by Nagappa Garajur and after his death his sons by name Yallappa, Hanmatha and Bsavanneppa have inherited the suit properties by inheritance. It also contended that said Nagappa had four sons amongst four sons one of the son namely Siddappa gone into adoption to the family of one Bhimappa Neelamnnavar of Turkarsigihalli. As the said Siddappa went for adoption, he has no share in the suit properties. However the name of the said Siddappa was entered in the ROR of the suit properties came to be deleted. Hence neither deceased Siddappa nor his son Madiwallappa have any rights, interest or share in the suit properties. Third son of propositus namely, Hanamantappa and his wife died

issueless. It is contended by the defendant No.2 that, the suit properties were in exclusive joint possession and enjoyment of the defendant No.2 to 11 since life time of propositus Nagappa. Hence a suit in O.S. No.78/2021 has been filed and it ended in compromise and the suit properties have been portioned between defendant No.2 to 11 by way of compromise decree. Hence defendant No.2 has prayed to dismiss the IA No.I and II.

4. Heard the arguments. Perused the entire case records.

5. The following points would arise for my consideration:

POINT

1) Whether the plaintiffs / applicants have made out a prima facie case in respect of IA-I ?

2) Whether the plaintiffs / applicants have made out a prima facie case in respect of IA- II?

3) Whether the balance of convenience lies infavour of the applicants/plaintiffs?

4) Whether the applicants/plaintiffs would be put to irreparable loss or injury in the event the IA No.I is not allowed?

5) Whether the applicants/plaintiffs would be put to irreparable loss or injury in the event the IA No. II is not allowed?

6) What order?

7. My findings on the aforesaid points is as under:

Point No.1: In the Affirmative

Point No.2: In the negative

Point No.3: In the Affirmative

Point No.4: In the Affirmative

Point No.5: In the Negative

Point No.6: As per final order for the following:

REASONS

8. **Point No. 1, 3 and 4:-** In order to avoid repetition of facts all these points are taken up together for discussion.

9. This is a suit for partition and separate possession in respect of the suit properties. According to the plaintiffs the suit properties were owned by the propositus Nagappa of the family of the parties to the suit. Propositus Nagappa had four children namely Siddappa, Basavennappa @ Basappa, Hanamantappa and Yallappa. Amongst these four sons of propositus Nagappa Hanamantappa died issue less. The plaintiffs and defendants have inherited the suit properties from propositus Nagappa and yet they have continued in joint possession and enjoyment of the suit properties along with all the defendants. On the other hand

the defendant No.2 contends that elder son of propositus Nagappa namely Siddappa who is the father of plaintiffs and defendant No.1 went into adoption to the family of one Bhimappa Neelammnavar. As Siddappa went for adoption of the family of Bhimappa Neelammnavar he had no right rights in the suit properties. On perusal of death extract of the Siddappa produced by the plaintiffs name of adoptive father of Siddappa could be seen as Bhimappa Neelammanavar.

10. At present stage of the case there is no material on record to show so as to whether suit properties of natural family of said Siddappa vested to him or not prior his adoption. No doubt there may be a case that the suit properties of genetic / natural father of Siddappa vested to the Said Siddappa along with his biological brothers. In such of the circumstances, any property of natural family vested

to Siddappa prior to he went for adoption would continue to be available to him even after though he is deemed to have severed all ties with his biological father Nagappa's family. The reason is that in OS. No.78/2021 filed the defendant No.2 all the children of Siddappa are not arrayed as parties to that suit. The defendant No.2 even he has not arrayed the all the legal heirs of Yallappa. The records show that the defendant No.2 has admitted the suit properties were the properties of propositus Nagappa. Such being the case all the legal representatives who represented the branch of deceased son Yallappa of propositus out have made the parties to suit in O.S No.78/2021. However, the defendant No.2 who represented the Branch deceased son Basavennappa of propositus and one of the son of Yallappa alone benefited the compromise decree in O.S. No.78/2021. At the present stage, there is an absence of materials on

record to show that the defendant No.1, 2 and 5 herein who were the parties to the compromise decree alone entitled to the property covered under the compromised decree in O.S No.78/2021.

11. It is averred by the plaintiffs that at present name of the defendant Nos.1, 2 and 5 is recorded in the RTC extracts of the suit properties. It is apprehended that the defendant Nos.1, 2 and 5 may alienate the suit properties in order to cause unlawful loss to the plaintiffs. Considering the fact that in their written statement the defendant No.2 has denied the rights of the plaintiffs and defendant No.2, the apprehension of the plaintiffs appears to be genuine. In order to avoid multiplicity of suits and impleading of purchasers if any in future, it is necessary to grant temporary injunction. As such at this stage of the proceeding the plaintiffs have made out prima-facie case

and balance of convenience is in their favour. Therefore point Nos.1, 3 and 4 are answered in affirmative.

12. **Point No.2 and 5:-** The plaintiffs have filed IA No.II seeking temporary injunction to restrain the defendant Nos.1, 2 and 5 from causing any sort of obstruction for their peaceful possession of suit property. On perusal of plaint averments the plaintiffs does not dispute the possession of the defendants over the suit properties. According to the plaintiffs the suit properties are the ancestral joint family properties of the plaintiffs and defendants and they are joint possession and enjoyment of the suit properties along with all the defendants. This is a suit for partition filed by the plaintiffs as against defendants in respect of the suit properties. Admittedly the parties are Hindu governed Mitakshar law, and as such, there is unless a partition by metes and bound takes place, nobody can claim ownership

of the partition of ancestral joint family properties. It is an accepted principle of law that no injunction restraining the co-parceners/co-owners can be granted. Therefore the present IA-II filed by plaintiffs is not maintainable. Accordingly, the point No.2 and 5 are answered in negative.

13. **Point No.6:** For the reasons assigned to Point Nos.1 to 5, and to meet the ends of justice I proceed to pass the following:

ORDER

I.A.No.I filed by the applicants/plaintiffs under Order 39 Rule 1 and 2 R/w. Section 151 of C.P.C. is hereby allowed.

The defendants Nos.1, 2 and 5 are hereby restrained from alienating the suit properties in any manner whatsoever until the disposal of the suit.

I.A.No.II filed by the applicants /plaintiffs under Order 39 Rule 1 and 2 R/w Sec. 151 of C.P.C. is hereby dismissed.

No order as cost.

(Dictated to the stenographer, direct on computer typed by him, corrected and pronounced in the open Court on this 26th day of July, 2024)

(Ravi Babu Chawan)
Senior Civil judge, Bailhongal

