

KABG300004782024



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

Present:

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

O.S. No.121/2024

Dated this the 3rd day of July, 2024

1) Shri. Mhantayya Guruputrayya Hiremath
and other.

.....Plaintiffs

Vs.

1) Smt. Nimbekka @ Nimbewwa W/o Kumarayya
Virakthamath, And others.

.....Defendants

PARTIES TO IA No.I

1) Shri. Mhantayya Guruputrayya Hiremath,
Age: 59 years, Occ: Agriculture/Lecturer,
R/o: Jalikoppa, Tq: Bailhongal Dist: Belagavi.

2) Smt. Pratiba W/o Gurupuarayya Hiremath,
Age: 34 years, Occ: Household work,
R/o: Gaddikaravinkoppa, Tq: Bailhongal,

Dist: Belagavi.

3) Smt. Archana Viany Chikkamath,
Age: 31 years, Occ: Household work,
R/o: Jalikoppa, Now at: Kadatanhal,
Tq: Kittur, Dist: Belagavi.

4) Shri. Sunil Mahantayya Hiremath,
Age: 28 years, Occ: Agriculture,
R/o: Jalikoppa, Tq: Bailhongal,
Dist: Belagavi.

.....Applicants/Plaintiffs

(By Sri. B.M.M., Advocate)

V/s

1) Smt. Nimbekka @ Nimbewwa W/o Kumarayya
Virakthamath,
Ag: 72 years, Occ: Household work,
R/o: Belawadi, Tq: Bailhongal,
Dist: Belagavi.

2) Shri. Basayya Kumarayya Virakthamath,
Age: 47 years, Occ: Agriculture,
R/o: Belawadi, Tq: Bailhongal,
Dist: Belagavi.

3) Smt. Pushppa W/o Chandrsekarayya Virakthmath,
Age: 45 years, Occ: Household work,
R/o: K.K. Koppa, Tq: Belagavi,
Dist: Belagavi.

4) Shri. Gangadharyya Thirthayya Virakthmath,
Age: 27 years, Occ: Agriculture,
R/o: Belawadi, Tq: Bailhongal, Dist: Belagavi.

5) Smt. Mangala W/o Sanddep Hiremath,
Age: 25 years, Occ: Household work,
R/o: Jalikoppa, Tq: Bailhongal, Dist: Belagavi.

6) Shri. Mahantayya @ Mahantesh Shivaputrayya
Virakthmath,
Age: 48 years, Occ: Agriculture/Lecture,
R/o: Belawai, Now at: Litle Scollers Acadamic school
Kanabargi Road, Ramateerth Nagar, Belagavi.
Dist: Belagavi

7) Shri. Gurushanayya Shivaputrayya Vrakthmath,
Age: 50 years, Occ: Agriculture/Business,
Now at:1543 sector 8 Anjaneya Nagar, Belagavi, Dist:
Belagavi.

.....Opponents/ Defendants.

(By Sri. C.S.C., Advocate for D1)
(By Sri. S.B.H., Advocate for D2,4,5)
(By Sri. P.D.M., Advocate for D3)

ORDER ON I.A.No.I

IA No.I is filed under Order 39 Rule 1 and 2 of CPC by the Applicant/Plaintiff against the defendant No.1,2 and 4 praying for an Ad-interim order restraining them from alienating the suit schedule properties bearing plots No.210/19, 210/20, 210/18, 210/14, 15, 16, 210/9, 210/10 and 11, 210/1, 210/13 and 210/28 are situated in RS No.

210 of Belwadi village by whatsoever manner until the disposal of the suit.

2. Facts in brief are as follows:

In the affidavits accompanying the application it is submitted by the applicant/plaintiff No.1 that the suit schedule B land bearing RS. No. 210 measuring 1 acre 38 guntas was converted as non agricultural land in the year 2003-04 during the life time of husband of defendant No.1 and father of defendant No.2 and 3. As per layout of plots RS No.210 of Belawadi village consisting of 34 plots. Out of 34 plots during the life time of owner by name Kumarayya Viraktmath sold about 25 plots to the public. It is further stated that said Kumarayya Virktmath died intestate and without partition leaving behind present defendant No.1 to 3, wife of plaintiff No.1 and mother of plaintiff No.2 to 4 namely Suvarna (first daughter) and defendant No.4 and 5 who are son and daughter of first son Teerthayya. After death of above said Kumarayya above his legal heirs are

succeeded to the entire schedule B and C properties. That after death of husband of defendant No.1 and father of defendant No.2 and 3, the elder daughter of Kumarayya and defendant No.1 by name Suvarna also died leaving behind present plaintiffs. The defendant No.2 objected to enter the names of the plaintiffs as legal heirs of his sister Suvarna. But Hon'ble Tahasildar without considering the objections raised by defendant No.2 passed order to enter all the legal heirs of deceased Suvarna by its order dated 07-10-2023 in RRt No.103/22. Accordingly all the legal heirs of deceased Suvarna brought on record of all the schedule B properties. The defendant No.2 being the present Belwadi Gram Panchayat member, taking undue advantage of panchayat membership and colluding with panchayat authorities and other members, got illegally entered his name along with defendant no.4 in the remaining N/A plots situated in RS No.210 measuring 1 acre 38 guntas behind back of the plaintiffs and now they are trying to alienate the same. The deceased Suvarna has got $1/5^{\text{th}}$ share in all

the schedule B and C properties as well as 9 plots situated in Rs.No.210 of Belawadi village. The defendant No.1, 2 and 4 for grabbing the share in the N/A plots behind the back of present plaintiffs illegally defendant No. 2 and 4 got mutated their names and now without knowledge to the plaintiffs they trying to sell the properties. Hence, sought for interim temporary injunction.

3. The defendant No. 1 has filed objections to IA-1. In written objections she denied that the suit properties are the joint family properties of the plaintiffs and defendants. Further she contended that the suit properties are absolute properties of defendant No.1 inherited from her mother Kashawwa by virtue of succession. She has filed suit in OS No.45/2022 for declaration of title and she obtained interim stay order against the defendants therein restraining from alienation of the properties involved in the said suit. Further defendant No.2 herein has also filed suit in OS. No.106/2022 for partition and separate possession and both

the above suits are pending for disposal. Therefore the present plaintiffs have no right to file the present suit. Hence prayed to dismiss the IA.

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

5. The following point would arise for my consideration:

P O I N T

- 1) Whether the plaintiffs / applicants have made out a prima facie case?
- 2) Whether the balance of convenience lies in favour of the applicants/plaintiffs?
- 3) Whether the applicants/plaintiffs would be put to irreparable loss or injury in the event the application is not allowed?
- 4) What order?

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

Point No. 1: Affirmative

Point No. 2: Affirmative

Point No. 3: Affirmative

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

REASONS

7. **Point No. 1 to 3:-** In order to avoid repetition of facts all these points are taken up together for discussion. This is a suit one for partition and separate possession and the plaintiffs are seeking their share in the alleged joint family properties. The present IA-1 is as against defendant No.1, 2 and 4 to restrain them from alienating the suit plots bearing No.210/19, 210/20, 210/18, 210/14, 15,16, 210/9, 210/10 and 11, 210/1, 210/13 and 210/28 all are situated in RS. No. 210 of Belawadi village. The defendant No.1 has filed objection to IA-1 and contended that the suit properties are the self acquired properties of her. The defendant no.1 has admitted that her son i.e., defendant No.2 herein filed suit in OS No.106/2022 for partition and separate possession. She has produced photo copy of plaint in OS No.106/2022 wherein the defendant No.2 herein has filed suit for partition in respect of plot No.210/12. In O. S No. 106/2022 the defendant No.2 has pleaded that the suit property involved in OS No.106/2022 is the joint family property of himself and defendants. It is significant to here that the property involved in OS No.106/2022 bearing plot No.210/12 is the one of the plots situated in RS. No.210 of

Belwadi village. Under such circumstances, without examining the evidence, both oral and documentary, it is difficult to come to a conclusion whether suit properties are self acquired property of defendant No.1. There is always a possibility of putting the self earned income into the joint family hotch-pot. Therefore at this stage it is not proper to conduct a mini trial. The contention of the plaintiffs that suit schedule B and C properties are joint family properties cannot be considered as a false or misleading statement. Learned counsel for Defendant No.1 has relied on the Judgment of our own High Court of Karnataka in support of his case **MFA No. 2172/2023(CPC)** in case between ***Smt. Najamma W/o Late Thimmarayappa and other V/s. Smt. Rajamma W/o Narayana Das and others***) .

The facts of that case are different from the case in hand. The ratio laid down by Hon'ble High Court does not apply to this case.

8. On the basis of objections filed by the defendant No. 1, the intention to sale of schedule properties could be gathered. According to the plaintiffs the defendant No.2 being Belwadi Gram Panchayat member taking undue advantage of his membership colluding with Panchayat

authorities has got entered his only name along with defendant No.4 in the remaining N/A plots situated in RS No.210. Thus the apprehensions raised by the plaintiffs that the defendant No.1, 2 and 4 are planning to alienate the N/A plots properties cannot be lightly brushed away. The order restraining alienation would ensure that the suit property is preserved until the disposal of the suit. In the circumstances, I am of opinion that the relief of temporary injunction restraining non-alienation is the most un-harmful order. The fact that there is a suit pending, any alienation would be hit by principles of lis-pendens under Section 52 of Transfer of Property Act. The conduct of defendant No.1 would suggest that the apprehension raised by plaintiffs is genuine. Hence there was prima facie case made out by the plaintiffs. If Temporary Injunction was not granted plaintiffs would have had suffered irreparable loss and the balance of inconvenience was also in favour of plaintiffs. Accordingly, I answer Point No.1 to 3 in Affirmative.

9. **Point No. 4:-** For the reasons assigned to Point no.1 to 3, and to meet the ends of justice I proceed to pass the following:

ORDER

I.A.No. I filed under Order 39 Rule 1 and 2 of C.P.C. is hereby allowed.

The defendant No.1, 2 and 4, their men, servant, agent or any person claiming under or through them are hereby restrained from alienating the suit schedule B property item No.1 remaining 9 plots situated at Belwadi village in any manner whatsoever until the disposal of the suit.

No order as to cost.

(Dictated to the stenographer, direct on computer and typed by him, corrected and pronounced in the open Court on 3rd day of July, 2024)

(Ravi Babu Chawan)
Senior Civil Judge, Bailhongal.

