

**IN THE COURT OF PRINCIPAL SENIOR CIVIL JUDGE,
AT CHIKODI**

: P R E S E N T :

**SRI. PATIL HARISH RANGANAGOWDA,
B.A., LL.B. (Hon's)
PRL. SENIOR CIVIL JUDGE, CHIKODI.**

O.S. No.107/2022

DATED THIS THE 3RD DAY OF JUNE 2023

BETWEEN :

SOU. RANJANA W/O. RAJENDRA DONGALE.

PLAINTIFF

(BY SRI S.S.VAIRAT., ADVOCATE)

AND :

**SMT. SHANTABAI W/O. MAHADEV MANE
AND OTHERS.**

DEFENDANTS

(D-1 AND D-4 BY SRI A.C.KAMATE., ADVOCATE)

(D-2 AND D-4 BY SRI P.K.KARNIK., ADVOCATE)

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ORDERS ON APPLICATION IA-I

The plaintiff has filed IA No.1 U/o. XXXIX Rules 1 & 2 of CPC seeking to restrain the defendant No.2 and 4 and their agents or anybody acting under them from alienating, transferring and mortgaging the suit schedule properties to third parties during the pendency of suit.

2. The facts of the case are unfurled here under :-

The plaintiff has pleaded that she herself and defendants constitute Hindu undivided joint family and suit properties are joint family properties of herself and

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defendants. According to her, One Mahadev Mane was the original propositions who died leaving behind widow (defendant No.1), two daughters (plaintiff and defendant No.3) and two sons (defendant No. 2 and 4). Therefore, she herself and defendants constitute Hindu undivided joint family. According to her, the suit item No.1 and 2 of suit 'A' schedule are the ancestral properties and suit item No.3 of said schedule has been purchased in the name of defendant No.4 by utilizing joint family income. Similarly, the suit schedule 'B' properties are also joint family properties and are standing in the name of defendant No.1, 2 and 4. The request made by her to effect partition and separate possession has been turn down by the defendants. Hence, she approached this court.

3. The defendants appeared through their counsel. The defendant No.1 and 4 filed their joint written statement by opposing the claim of plaintiff over suit schedule property. According to them, the partition has already taken place between defendant No.2 and 4 during the life time of their father Mahadev in the year 2002 itself. The plaintiff and defendant No.3 have given varadi before revenue authorities by consenting to mutate the name of defendant No.2 and 4 over suit property. Therefore, the defendant No. 2 and 4 are in possession of suit item No.1 and 2 of suit 'A' schedule and properties shown in the 'B' Schedule. The suit item No.3 of 'A' schedule has been purchased by the defendant No. 4 on his own income. They have further pleaded that the revenue authorities have considered the varadi given by the plaintiffs

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in consenting to mutate the name of defendant No. 2 and 4 over suit property. Therefore, it indicates that the said partition has already been acted upon. Therefore, they seek to dismiss the suit.

4. As indicated above, the plaintiff has filed IA No.1 U/O. XXXIX Rule 1 & 2 of CPC seeking to restrain the defendant No.2 and 4 from alienating the suit properties. Having heard both the sides and having perused the materials available on record, the following points would arise for my consideration :-

1. Whether the plaintiff made out prime-facie case in issuing injunction ?
2. Whether the plaintiff proves that the balance of conveniences lies in her favour ?
3. Whether the plaintiff proves that if injunction is refused, she would be put to irreparable loss or injury which cannot be compensated in terms of money ?

4. What order ?

5. My finding on the above points are as under :-

Point No.1 to 3 : In the Affirmative.

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


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REASONS

6. **Point No.1 to 3 :-** In order to avoid the repetition of facts, these points are taken together for common consideration. It is the assertion of plaintiff that she herself and defendants constitute Hindu undivided joint family and suit properties are joint family properties of herself and defendants. The request made by her to effect partition and separate possession of her share over suit property has been turn down by the defendants. Hence, she approached this court.

7. The defendant No.1 and 4 opposed the suit claim by contending that the suit properties are not available for partition as they have been divided between defendant No. 2 and 4. The suit item No.3 of 'A' schedule is the individual property of defendant No.4 who had purchased under registered sale deed on his own income. Therefore, they seek to dismiss the suit.

8. **Based on rival contentions of the parties, the following disputed facts can be culled out here under :-**

- a). It is not in dispute that the plaintiff and defendant No.1 to 4 are the lineal descendants of one Mahadev Mane.
- b) The said Mahadev Mane died leaving behind widow (defendant No.1, two daughters

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(plaintiff and defendant No.3) and two sons (defendant No.2 and 4).

c) It is also not in dispute that the suit item No.1 and 2 of suit 'A' schedule and properties shown in the 'B' Schedule have been held by said Mahadev Mane.

d) The only dispute between parties is in regard to availability of suit properties for the proposed division sought by the plaintiff. In other words, the existence of joint family between plaintiff and defendants is in dispute.

9. Therefore, with this backdrop of admitted and disputed fact, I proceed to examine the materials placed by the parties. The plaintiff has buttress her case by placing reliance on record of rights, copies of panchayat records and aadhar card. On the other hand, the defendant No.1 and 4 have buttress their case by producing the copy of sale deed, mutation extract, copy of application with the Kabuli varadi, orders of Tahasildar, Assistant commissioner and Deputy commissioner. They have also placed reliance on sugarcane receipts and tobacco sale receipts. The materials on record indicates that the plaintiff and defendant No.3 are the daughters of deceased Mahadev Mane. The defendant No.1 is the widow and defendant No.2 and 4 are the sons of said Mahadev Mane. Therefore, the relationship pleaded by the

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plaintiff is not in dispute. The only dispute is in regard to existence of joint family and availability of suit properties for the proposed division sought by the plaintiff. The defendant No.1 and 4 have mainly relied upon the copy of varadi given by plaintiff and defendant No.3 before revenue authorities consenting to mutate the name of defendant No. 2 and 4 over the suit property. The said varadi did not indicate relinquishing of right of plaintiff over suit properties. It indicates only giving up of consent mutate the name of defendant No.2 and 4 over suit property on the death of their father. Therefore, it did not specifically indicate the intention of plaintiff and defendant No.3 in giving up of their right over suit property. Therefore, the mutation entry bearing M.R. No.78/CEN 2792 also did not specifically indicate the information about giving up of right of plaintiff over suit property. Therefore, there is no clear material indicating the intention expressed by the plaintiff and defendant No.3 in giving consent to mutate name of defendant No. 2 and 4 over suit property. Therefore, the defendant No.1 and 4 have to establish the alleged the division in the trial.

10. The defendant No.4 has specifically contended that the said partition has acted upon as the revenue entries indicates their individual name. The record of right produced by plaintiff in regard to suit item No.1 and 2 of suit 'A' schedule indicates the joint name of defendant No.2 and 4. The defendant No.1 and 4 did not explain as to why the record of right is jointly standing in the name of defendant No.2 and 4. Similarly, some of the properties shown in the suit schedule

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'B' are still standing in the name of deceased Mahadev Mane. Therefore, the contention of defendant No.1 and 4 that the partition has taken place and it has been acted upon cannot be accepted at this stage. The defendant No.1 and 4 have to prove the said partition in the trial court. They also relied upon the revenue orders passed by revenue authorities in confirming the order of mutating the name of defendant No.2 and 4 over suit property. The said dispute is not in between plaintiff and defendant No.2 and 4. It is between third parties and defendant No.2 and 4. Moreover, the said orders also did not indicate the recording of finding in regard to relinquishing of right of plaintiff. Therefore, the said orders have no bearing on the present case. They have also relied upon the copy of sale deed of defendant No.4 in regard to suit item No.3 of 'A' schedule to contend that the said property is the exclusive property of defendant No.4. Admittedly, the other two properties of same schedule are still standing in the joint name of defendant No.2 and 4. Therefore, it is incumbent upon the defendant No.4 to prove that he has independent income to purchase the said property. The plaintiff is also required to prove that the joint family possessed sufficient income to purchase the said property. The relative value of suit item No.1 and 2 prime-facie indicate the good income from the said property. The defendant No.4 also did not specifically mention about any other avocation and income to purchase the said property. Therefore, in the absence of specific pleading from defendant No.4, the court can not disbelieve the contention of plaintiff at this

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Therefore keeping open the aspect of nature of property in the hand of defendant No.4, i deem it appropriate to save the alienation of said property till disposal of this suit. The sugarcane and tobacco sale receipts have to be considered in the trial as the suit item No. 1 and 2 of 'A' and properties shown in the 'B' schedule are still jointly standing in the name of defendant No. 2 and 4. Therefore, the said document cannot be safely relied upon at this stage to infer the said division. Therefore, the material on record indicates that the plaintiff has made out prima-facie case for issuance of injunction. If the defendants are not restrained from alienating the property, they may create third party interest over suit property which may hamper the trial of suit. Therefore, considering the interest of both the parties over suit property, I hold that the properties could be saved from alienation. Therefore, I hold above points in the **Affirmative**.

11. **Point No.4 :-** In the light aforesaid finding on the above said points, I proceed to pass following :

ORDER

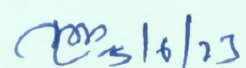
The IA No.1 filed by plaintiff U/O. XXXIX Rule 1 and 2 of CPC., is hereby allowed and consequently, the defendant No.2 and 4 are hereby temporarily restrained from alienating the suit properties to third parties till disposal of suit.


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It is made it clear to the parties that the order of injunction will not come in the way of agricultural activity over suit property including taking agricultural loans from the public undertaking bank and repaying the said loans.

The observation made above will not come in the way of parties in agitating their contention in the full pledge trial. Call on 07/07/2023 for invoking section 89 of CPC.

(Dictated to the typist directly over the computer in open court and typed by her and corrected, signed and then pronounced by me in the Open Court on this the 03rd day of June 2023.)


**Prl. Senior Civil Judge,
Chikodi.**