

KABG400003792021



IN THE COURT OF PRINCIPAL SENIOR CIVIL JUDGE,
AT CHIKODI

: P R E S E N T :

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

OS No.110/2021

23rd DAY OF NOVEMBER - 2023

BETWEEN :

1. Smt. Gangubai Kallappa Killedar
... Plaintiff

(By Sri. S. N. Patil, Adv.,)

AND :

1. Sri. Maruti Babu Awate
and others
...Defendants

(D1, 6 & 8 by Sri. P. S. Sadarjoshi, Adv.,)

(D2 to 4 by Sri. M. B. Kiwad, Adv.,)

(D5 by Sri. S. V. Ghaste, Adv.,)

(D7 and 9 Ex-parte)

ORDERS ON IA NO.I AND V

The plaintiff has filed IA No.I u/O.39 Rule 1 and 2 R/w Sec.151 of CPC seeking to restrain the defendant Nos.1 to 4 from alienating the suit schedule properties till disposal of suit.

The defendant Nos.1, 6 and 8 have filed IA No.V u/O.39 Rule 4 of CPC seeking to vacate the interim order. Heard both the application.

2. Facts of the case are unfurled here under:

It is pleaded by the plaintiff that she herself and defendant Nos.1 to 6 constitute Hindu undivided joint family being lineal descendants of one Babu and Kashavva. The said Babu died leaving behind five children namely Appasab (died leaving behind defendant No.4 Raju), Basappa (defendant No.2), Virupakshi (defendant No.3), Shantavva (defendant No.5) and Maruti (defendant No.1). She has further pleaded that she herself and defendant No.6 are the daughters of defendant No.1. Thus she herself and defendant No.1 constitute Hindu undivided joint

family and suit properties are joint family properties of herself and defendant Nos.1 to 6. The defendant Nos. 7 to 9 are formal parties to suit as their name appeared in record of right in respect of suit schedule 'C' property. Therefore she has filed this suit seeking for the relief of partition and separate possession.

3. The defendant Nos.1 to 6 and 8 have appeared through their counsel. The defendant Nos.1 and 8 have filed joint written statement. The defendant No.1 also signed the written statement as minor guardian of defendant No.6. The defendant Nos.1 and 8 have opposed the suit on the ground that the suit is bad for non-joinder of necessary party. According to them the defendant No.1 and his wife Anitha have adopted the son of defendant No.8 by name Amar as their son under registered adoption deed dated:13.06.2019. Since then the said Amar is the son of defendant No.1. He also got changed his name by virtue of decree passed in OS No.43/2020. Hence, present suit is not maintainable without including the said Amar. They further pleaded that the defendant No.1 and his

wife Anitha have lot of love and affection towards defendant no.8. Hence, the said Anitha has executed will deed in favour of defendant No.8 under will deed dated: 10.01.2020 in regard to suit schedule 'C' property. Therefore the defendant No.8 became owner of said property. They further pleaded that the suit is bad for non-inclusion of other properties. Hence, they seek to dismiss the suit in respect of suit schedule 'C' property and grant partition in respect of suit schedule 'A' and 'B' property.

4. As indicated above the plaintiff has filed IA No.I u/O.39 Rule 1 and 2 R/w Sec.151 of CPC seeking to restrain the defendant Nos.1 to 4 from alienating the suit properties to third parties during the pendency of suit. This court by order dated:23.07.2021 granted interim injunction against defendant Nos.1 to 4 from alienating the properties. The defendant Nos.1, 6 and 8 have filed IA No.V u/O.39 Rule 4 of CPC seeking to vacate the said interim order dated:23.07.2021. They have undertaken that they will not alienate the property. According to them

the said interim order is affecting their day today activities over suit property. Therefore they seek to vacate the said interim order. Heard on behalf of defendant No.1, 6 and 8.

5. Having heard and having perused the material on record, the following points would arise for my consideration:

1. Whether the plaintiff has made out prima-facie case for issuance of injunction ?

2. Whether the plaintiff proves that the balance of convenience lies in her favour ?

3. Whether the plaintiff proves that if injunction is refused, she would be put to irreparable loss which cannot be compensated in terms of money?

4. Whether the defendant Nos.1, 6 and 8 make out ground to vacate the interim order ?

5. What order?

6. Having heard and having perused the material on record, my findings to above points is as under:

Point Nos.1 to 3 : In the Affirmative

Point No.4 : In the Negative

**Point No.5 : As per the final order,
for the following:**

:: REASONS ::

7. **Point Nos.1 to 4:-** In order to avoid the repetition of facts, these points are taken together for common consideration. The plaintiff has contended that she herself and defendant Nos.1 to 6 constitute Hindu undivided joint family and suit properties are joint family properties of herself and defendant No.1 to 6 and request made by her to effect partition and separate possession has been turn down. Hence, she filed this suit. The defendant Nos.2 to 5, 7 and 9 did not choose to oppose the suit claim. The defendant Nos.1, 6 and 8 have opposed the suit claim only in respect of suit schedule 'C' property. In fact they to seek to divide suit schedule 'A' and 'B' property.

Therefore the material pleading on record indicates that there is no dispute in regard to suit schedule 'A' and 'B' properties. In fact the said properties are jointly standing in the name of defendant Nos.1 to 4. The only dispute is in regard to suit schedule 'C' property. According to defendant No.1, his wife Smt. Anitha has executed will deed in favour of defendant No.8 in respect of said property. The name of defendant No.8 was appearing along with one Anusuya Maruti Avate and Laxman Babu Desai. The defendant Nos.1, 6 and 8 have contended that the defendant No.1 and said Smt. Anusuya @ Anitha have adopted son of defendant No.8 in adoption under registered adoption deed dated:13.06.2019. They have not produced the said adoption deed. They have also not produced alleged will deed executed by said Smt. Anusuya @ Anitha in favour of defendant No.8 in respect of suit schedule 'C' property. Be that as it may be the right of said Smt. Anitha in executing the will also need to be examined in the trial. Further the beneficiary of will is duty bound to prove the said will in accordance with law. Therefore the rights of parties need to be safeguard by restraining the

alienation. The defendant Nos.1 and 8 have themselves filed affidavit that they will alienate property. The only grievance of defendant Nos.1 and 8 that the said interim order of injunction is coming in the day today activities over suit property. The effect of interim order is only against defendant Nos.1 to 4 restraining them from alienating the property alone. The said order of injunction will not come in the way of defendant Nos.1 to 4 in doing their day today activities. It is also not out of place to mention here that the said order of injunction will not come in the way of parties in getting renewal of loans obtained over suit properties which is reflecting in the record of right. Therefore keeping in mind the interest of both parties over subject matter of suit and to protect the properties for trial, I hold that the injunction restraining alienation need to be continued with a note that the said order of injunction will not come in the way of defendant Nos.1 to 4 in enjoying the property and getting renewal of agricultural loans. **Therefore, I hold above point Nos.1 to 3 in the Affirmative and point No.4 in the Negative.**

8. Point No.5:- In the light of aforesaid finding on the above said points, I proceed to pass the following:

ORDER

The IA No.I filed by plaintiff u/O.39 Rule 1 and 2 R/w Sec.151 of CPC is hereby allowed.

The defendant Nos.1 to 4 and their agents or anybody acting under them are hereby temporarily restrained from alienating the suit properties till disposal of suit.

It is made it clear that this order of injunction will not come in the way of defendants in enjoying the properties standing in their name. It is also made it clear that this order of injunction will not come in the way of defendants in getting renewal of loans standing on the suit properties.

**Accordingly, the IA No.V filed by
defendant Nos.1, 6 and 8 u/O.39 Rule
4 of CPC is hereby rejected.**

(Dictated to the stenographer directly over the
computer, typed by her, corrected, signed and then
pronounced by me in the open court on this the
23rd day of November, 2023).

**(PATIL HARISH RANGANAGOUDA)
Prl. Senior Civil Judge,
Chikodi.**