

KABG410024962024



IN THE COURT OF THE I ADDL. CIVIL JUDGE & JMFC,
CHIKODI, AT: CHIKODI.

Present: **Smt. Trupti Dharane.,**
B.A. LLB., LLM,
I Addl. Civil Judge & JMFC,
Chikodi.

Dated this the 24th day of July 2024

Original Suit No.187/2024

Plaintiffs: 1. Sri. Parashuram S/o. Chandrappa
Gayakwad,
Age: 52 years, Occ: Agriculture
R/o: Mamadapur K.K.,
Tq: Chikodi, Dist:Belagavi.
Now at Latawade, Kolhapur.
13 others.

(By Sri. V. J. G, Advocate)

Vs

Defendants: 1. Smt. Leela @ Neelawwa W/o. Pundalik
Gayakwad,
Age: 70 years, Occ: Household work,
R/o: Mamadapur KK, Tq: Chikodi,
6 others

(By Shri. R. B. H., Advocate)

Parties To I.A.No.I**Applicant/Ori. Plaintiff:**

- 1) Sri.Parashuram S/o. Chandrappa Gayakwad,
R/o: Mamadapur K.K.,
Tq: Chikodi, Dist:Belagavi.

Vs**Opponent/Ori. Defendant:**

- 1) Smt. Leela @ Neelawwa W/o. Pundalik
Gayakwad,
R/o: Mamadapur KK, Tq: Chikodi,

i	Provision under which the application filed	U/O XXXIX Rule 1 & 2 R/W Sec.151 of CPC
ii	Relief sought for	Temporary Injunction
iii	The date on which the application is filed	20-03-2024
iv	Number of the application	I.A.No.1
v	The date on which the objections are filed by opponents	15-06-2024 R-1 written statement averments taken as objections
vi	The date on which the orders were passed on the said application	24-07-2024

**ORDERS ON I.A.NO.I FILED UNDER ORDER
XXXIX RULE 1 & 2 R/W SEC.151 OF CPC**

This is an application filed by the plaintiffs U/O. 39 Rule 1 and 2 R/W Sec.151 of CPC., and prayed for grant of temporary injunction in favour of plaintiffs, against the defendant No.1 from alienating, transferring or encumbering the suit property till disposal of the suit.

2. In support of the application, plaintiff No.12 has sworn to the affidavit on his behalf and on behalf of other plaintiffs and contended that,

(a) they have filed this suit for the relief of declaration and permanent injunction. One Yeshwant Malashidda Ghantichudi is the propositus of family of plaintiffs and defendants. He had wife of said Yeshwant by name Yallawwa demised long back leaving behind 4 sons by name, Krishnappa, Chandrappa, Laxman and Satteppa. The 1st son by name Krishnappa married to Bhimavva and both of them demise leaving behind sons by name Danoji and Pundalik. The said Danoji and his wife Pavitra demised leaving behind son by name Yeshwant and daughters by name Yallawwa, Laxmi and Kalawati who are defendants No.2 to 4. Yeshwant also demised leaving behind his wife Chandrawwa and two sons by name Siddappa and Basappa, who are defendants No.5 to 7. Pundalik demised on 23-01-2014, leaving behind his wife defendant No.1.

(b) It is further contended that the 2nd son of propositus by name Chandrappa married to Changuni and they demised leaving behind 6 sons by name Tukaram, Namadev, Mahadev, Parashuram i.e, plaintiff No.1, Sahadev and Kallolippa. Tukaram demised leaving behind wife by name Basavva and daughter by name Renuka who are plaintiffs No.2 and 3. Namdev married to Ratnavva and they demised leaving behind one son by name Babu i.e., plaintiff No.4 and 3 daughters by name Lakkavva, Ashwini and Bhagirathi. Mahadev has demised leaving behind his wife and two sons i.e., plaintiff No.5 and 6 and one daughter by name Mallavva. Sahadev

demised unmarried. Kallolippa married to Hollewwa and both of them demised leaving behind a son who is plaintiff No.7 and one daughter by name Satyawwa.

(c) It is further contended that, 3rd son by name Laxman and his Tulasabai demised leaving behind 3 sons by name Yeshwant, Sadashiv i.e., plaintiff No.10 and Mutteppa plaintiff No.11 and 3 daughters by name Mallavva, Yallawwa, Satyawwa. Yeshwant demised leaving behind his wife and two sons who are plaintiffs No.8 and 9. The 4th son by name Satteppa and his wife Sitawwa demised leaving behind 3 sons i.e., plaintiffs No.12, 13 and Bhimappa. 4 daughters by name Kashawwa, Revakka, Basavva and Yallawwa. Bhimappa demised leaving behind wife Laxmibai, daughter Mahadevi and son i.e., plaintiff No.14.

(d) It is further contended that, this suit is filed by male members of branches of Chandrappa, Laxman and Satteppa for and on behalf of their branches. The propositus Yeshwant was the owner of land bearing Sy.No.62 and R.S.No.63 of Chikodi taluka. After his death the name of his sons were entered into the records as owners in possession. In the year 1993 all the 4 sons of propositus have effected partition pertaining to R.S.No.62 and 63 allowing equal extent of land. Accordingly, all the branches came in separate possession and enjoyment of their respective shares. In R.S. No.62 there is a temple of Jodalingeshwar VahanaKuppi Basaveshwar which is ancient one and looked after by the family of plaintiff and defendants. In the partition an area of 19 gunts out of Survey number R.S.No.62 including the said temple and surrounding area

was not partitioned. It was kept in common between 4 branches of the family, It was also decided to enter the name of Krishnappa as he was elder male member in the family at that time.

(e) It is further contended that, as per the partition, wardi was effected and mutation entries were made to the name of respective share holders to the extent of their shares, which have been allotted to them in both the lands. As to 19 guntas of land in R.S.No.62 mutation is effected in the name of Krishnappa and Basavanna Gudda Jaga. The said 19 guntas is the suit property. Suit property is the ancestral property, plaintiffs and defendants are in joint possession of the same. The temple is the suit property developed which include small temples of Rama and Raghavendra with 6 idols of different Gods. The Compound wall is also constructed surrounding the 4 sides of suit property., including the bore-well. Every year Jatra being conducted on small scale basis. Plaintiffs and Defendants are looking after the suit property and temple. Even though the name of Krishnappa and after him name of Pundalik also entered, but plaintiffs and defendants are also joint owners of suit property. The suit property was not allotted to the share of Krishnappa at the partition in the year 1993. Krishnappa and his sons have never denied the joint right ownership of plaintiffs.

(f) It is further contended that after the death of Pundalik in the month January 2024 it came to the notice of plaintiff that defendant No.1 is trying to enter her name in the alone in the record of right as legal heir of Pundalik and to alienate the same. Therefore,

they approached and requested her to enter the names of male branches of propositus as she has no children and suit property is a joint property. But she refused to do so claiming that she is owner of suit property. The defendant No.1 has also remember that to enter her name to the suit property and plaintiffs have objected to matter has been referred to Tahasildar Nagarmunolli, which is pending for disposal. Till the disposal of this suit if defendant No.1 alienate the suit property it will put loss and hardship to the plaintiffs and it will lead to multiplicity of proceedings. They have made prima facie case. If the application is allowed no hardship will be caused to the other. If not allowed they will be put to great hardship and loss. The order is protect to the nature maintain and preserve the property hence prays to allow the application.

3. Per contra, defendant No.1 filed written statement and adopt the same as counter to IA No.1.

(a) In the written statement defendant No.1 has contended that, the suit of the plaintiff is false vexatious and not maintainable in the eyes of the law. The genealogy furnished is in complete. She denies the averments of the plaint except those admitted. It is contended that, the genealogy of the parties is non controversial and there was legal, valid and conclusive partition all ready been effected. Further Krishna, Satteppa, Yeshwant, Sadashiv, Mutteppa Taukaram, Namdev, Mahadev, Sahadev, Parashuram and Kallolippa have alienated 5 acres 20 guntas in favour of Padmavati Bhimappa Gayakwad, which also supports the fact of legal partition. In the said partition as per the amicable settlement the suit property is allotted

exclusively in favour of husband of defendant No.1. In this regard his name is also mutated as per the mutation bearing 1170, which has remained undisputed and unchallenged till date. In pursuance of the partition all the family members were in separate and actual possession were there separate properties. In this regard there were transaction taken place which also shows about legal partition. Thus Dhamoji has alienated 1 acre 32 guntas in Sy.No.62 and open Well in Sy.No.63 in favour of Padmavati Bhimappa Gaikwad and mutation entries were also made. Satyappa has alienated 2 acre 21 guntas in Sy.No.63 and share in open Well to one Basappa and Tammanna and others. Namdev, Mahadev Sahadev also alienated their share in open Well and 3 acres of land infavour of Gangavva Ramappa Mudalagi. Yeshwant also alienated 1 acre 8 guntas of land in Sy.No.62 in favour of Yallappa Tapashi. One Rabsidda has sold 1 acre of land along with open Well in Sy.No.63 to Mahadev, Parashuram, Kallappa. Even the separate waradi has been effected in favour of 4 sons of propositus and after their death in favour of their sons. The suit property was allotted to the husband of defendant No.1 as he followed the devotional path. The Basavanagudi was not in existence originally but it was the husband of the defendant No.1 who was serving in Indian railways has developed the surround area of Basavanagudi temple and constructed new temples of God and Goddess by investing his entire life earnings. Thus the defendant No.1 and her husband has devoted their life towards the temple and developed it. The plaintiff and other family members are not connected and does not have any right

of worshipping their temple. The said temple is private one and not registered under any government scheme or department. The suit property is separate property of husband of defendant No.1 after his death she become the absolute owner. The present application is filed with malafide intention. All the family members are not added as parties to the suit. The prima facie case, balance of convenience lies in favour of defendant No.1. Defendant No.1 has given an application for entering her name in the revenue records. To which plaintiffs have filed objections and now the matter is pending before Deputy Tahasilar, Nagarmunolli. Defendant No.1 has no intention to alienate the suit property as the temple has been developed by her deceased husband and herself and she has got emotional connection with it. The interim application has been been filed with an intention to cause wrongful loss to the defendant No.1. The exparte order passed on I.A.No.1 is produced before the Deputy Tahasildar, stating that since interim order is in force, mutation cannot be effected. Hence, prays to dismiss the application.

4. Heard both the learned counsels and perused the application, objection and pleadings, with materials on record.

5. The following points arise for my consideration:

POINTS

1. Whether the plaintiffs have made out a prima facie case?

2. Whether balance of convenience lies in favour of plaintiffs?
 3. Whether the plaintiffs will be put to irreparable loss and injury, if the application is not allowed?
 4. What order ?
6. My answer to the above points are;

Point No.1:	In the Negative
Point No.2:	In the Negative
Point No.3:	In the Negative
Point No.4:	As per the final order for the following;

REASONS

7. **Point No.1 to 3** :- Since points are interlinked, I proceed to discuss all 1 to 3 points together to avoid repetition.
8. The law is well settled that in order to ascertain whether there is prima- facie case the court must be satisfied that the applicant has raised bonafide dispute which needs investigation and decision on merits and there is probability of applicant being entitled to the relief claimed by him/her.
9. Both the counsel for plaintiffs and defendants have reiterated what is stated by them in their application, objection and pleadings put forth by them. Plaintiff has filed this suit for Declaration and injunction on the ground that plaintiff and defendants belongs to the

same family with the same propositus by name Yeshwant Malashidda Gantichudi. In the year 1993 partition has been effected and equal allotment has been made pertaining to R.S.No.62 and 63 to all the 4 sons and accordingly all the branches came in separate possession and enjoyment of their respective portion of land. In RS No.62 there is a temple, which is ancient one and looked after by family of plaintiffs and defendants. Therefore, at the time of partition 9 guntas out of entire extent of R.S.No.62 , which include said temple and its surrounding area was not portioned and kept common between 4 branches and the name of deceased grandfather of deceased husband of defendant No.1 has been decided to enter in the revenue records as he is elder male member of the family. Accordingly the same was entered. After the death of Krishnappa name of husband of defendant No.1 was entered. The said temple has been developed with big temple with compound wall. The plaintiffs and defendants are joint owners of the said property. But after the death of Pundalik in the month of January, defendant No.1 is intending to enter her name alone in the suit schedule property as legal heir and to alienate the same. Plaintiffs have also requested her to enter their names to the suit schedule property along with her but she refused to do so and filed an application to enter her name to the suit schedule property.

In support of their case, plaintiffs have filed RTC extract of Sy.No.62 from 2016 till 2020. Mutation extract, application given to Tahasildar Chikodi, RTC extract of Sy.No.62 from 1946 till 2002, M.R.Extract, notice issued by Tahasildar, objections and photos.

10. Per contra defendant has filed objections to the application and admitted the relationship and partition which has been effected between the members of their family. She has also contended that, the partition has been acted upon and portion of the land allotted to the respective co owners has been sold out by them. Thus all the parties have been put in separate and actual possession of their respective portion of allotted lands. She has also contended about mutation of the properties in the name of son after the death of some of the coparceners. She has contended that suit schedule property was allotted to her husband and he has developed the surrounding area of the temple by constructing new temples by investing huge amount of money from his own earnings. Thus plaintiffs are not concerned with the said properties and they do not have any right over it. She has also filed application for entering her name in the place of her husband in revenue records, wherein plaintiffs have filed their objections and the case is pending before Deputy Tahasildar, Nagarmunolli. Plaintiffs have also produced the exparte interim order to the Deputy Tahasildar, contending that in view of it mutation cannot be effected. She has also contended that she has no intention to alienate the property at any point of time, as she has emotional connection with it because it has been developed by her husband and herself.

In support of the contention defendant has filed memo stating that she will not alienate the suit schedule property and also produced her SSLC marks card.

11. Counsel for the defendant has relied upon the judgment between Dalpathkumar Vs Prahlad Singh reported in LAWS (SC) 1991, 1257 wherein Hon'ble Apex Court has discussed material circumstances to be kept in mind while granting temporary injunction. He has also relied upon the order between N.E.Shivanna Vs. Kumar Prasad Setty reported in Writ petition No.12513 of 2020-22 (GM-CPC dated 14-07-2022) wherein Hon'ble HC of Karnataka has dismissed the petition taking note of under taking filed by the defendant stating that he will not claim the equity if he completes construction.

12. At this stage, what is required to be ascertained is that whether plaintiffs have made out a prima facie case. Plaintiffs contends that, their was partition in their family except suit schedule property and they all have decided to enter the name of grandfather of deceased husband of defendant No.1 in the revenue records as he is elder male member of the family. Thus, plaintiffs and defendants have right over the suit schedule property as it is ancestral one and there was no partition with respect to it. In the suit schedule property there is a temple which has now been developed as big temple. After the death of grandfather of the deceased husband of defendant No.1 name of husband of defendant No.1 was entered in the suit schedule property, but since there was no partition pertaining to the said property it belongs to plaintiffs and defendants. Defendant No.1 has filed application to enter her name in the revenue records after the death of her husband and she will alienate the suit property. Plaintiffs have also requested her to enter their names also to the suit

schedule property but she refused to do so. Per contract, defendant No.1 admits the relationship and partition and contends that the said partition was legal one and suit schedule property was allotted to the name of grandfather of husband of defendant No.1 and accordingly his name was mutated. It is her husband who has developed the temple in the suit schedule property along with construction of other temples in it by investing his life earnings. Now she has filed application for mutating her name to the said property after the demise of her husband. But plaintiffs have filed objection to it, and submitted interim TI stating that in view of it mutation cannot be granted. She contents that she has no intention to alienate the suit property because she is emotionally connected with it, since it has been developed by her husband. In support of their contention plaintiffs have filed RTCs and MR extracts, and photos of suit schedule property. Per contra defendant filed memo undertaking that she will not alienate the property. It is pertinent to note here that plaintiffs Themselves have contended that the family members have decided to enter the name of grand father of deceased husband of defendant No.1 to the suit schedule property and in order to support this claim, they have produced RTC and MR extract. But plaintiff further contends that there was no partition pertaining to suit schedule property. On the other hand defendant No.1 contends that the said property was allotted to the share of her husband. Whether there was partition pertaining to suit schedule property or not is a matter of trial, at this stage court is not expected to conduct a mini trial. Further, prima facie on the basis of

documents produced it reflects that the name of defendant No.1 is not mutated, therefore, technically defendant No.1 cannot alienate the suit schedule property. As such, court cannot pass an order which will become futile. Further, defendant No.1 has pleaded in the written statement which amounts to judicial admission contending that, she is not intended to alienate the suit schedule property. Thus, the apprehension on the part of plaintiff that defendant No.1 may alienate the suit schedule property becomes in-justifiable, in view of the pleading of the defendant no.1 and the memo.

13. On the basis of above discussion and under circumstance, plaintiffs have not made out prima facie case and if application is not allowed no injury would be caused to plaintiffs as defendants No.1 has undertaken that, she will not alienate the suit property as such balance of convenience lies more in favour of defendant No.1 and does not lie in favour of plaintiffs, under these circumstances I, hold point No.1 to 3 in the Negative.

14. Point No.4: In view of above findings, I proceed to pass the following

ORDER

IA No.I filed by the plaintiffs U/O 39 Rule 1
and 2 R/w 151 of CPC is hereby dismissed.

(Dictated to the Stenographer directly on computer, revised, corrected by me and then pronounced in the Open Court on this the 24th day of July 2024).

(Trupti Dharane)
I Addl. Civil Judge & JMFC.,
Chikodi.

