

KABG600005102023



IN THE COURT OF THE SENIOR CIVIL JUDGE, HUKKERI.

Before : **Sri K.S.Rotter**, B.Com. LL.B (Spl),
Senior Civil Judge, Hukkeri.

Dated this 16th day of July 2024.

O S No.216/2023

Plaintiff: Smt. Ratnavva W/o Bassappa @ Basavanni
Kotabagi

-Versus-

Defendants: Shri Irappa Bassappa @ Basavanni Kotabagi
and others

PARTIES TO IA NO.I

Applicant/Plaintiff:

1. **Smt. Ratnavva W/o Bassappa @ Basavanni
Kotabagi,**
Age: 55 years, Occ: Agriculture/Household,
R/o: Noginhal, Taluk: Hukkeri,
District: Belagavi.

(By Shri. S. B. Karatagi, Advocate)

-Versus-

Opponents/Defendants :

1. **Shri Irappa Bassappa @ Basavanni Kotabagi,**
Age: 34 years, Occ: Agriculture,
R/o: Noginahal, Taluk: Hukkeri,
District: Belagavi and others.
(D1 and 2 By Shri. K.M.B, Advocate)

(D3 By Shri. S.G. Nadaf, Advocate)

PARTIES TO IA NO.II

Applicant/Defendant No.3:

1. **Shri Maruti Shivappa Kotabagi,**
Age: 64 years, Occ: Agriculture,
R/o: Kotabagi, Tal : Hukkeri,
Dist : Belagavi and others

(By Shri. S. G. Nadaf, Advocate)

-Versus-

Opponent/Plaintiff :

1. **Smt. Ratnavva W/o Bassappa @ Basavanni Kotabagi,**
Age: 55 years, Occ: Agriculture/Household,
R/o: Noginhal, Taluk: Hukkeri,
District: Belagavi.

(By Shri, S. B. Karatagi, Advocate)

- i). *Provisioned under which the application is filed* : IA No.I U/o.39 Rules-1 and 2 R/w Sec.151 of C.P.C.
IA No.II U/o.39 Rule 4 R/w Sec.151 of C.P.C
- ii). *Relief sought for* : IA No.I -Grant of Temporary Injunction.
IA No.II -Vacating Temporary Injunction.
- iii). *The date on which the Application is filed* : IA-I- 01.08.2023
IA-II- 05.02.2024
- iv). *Number of the applications* : IA No.I and II
- v). *The date on which the objections are filed by the different opponent:* IA-I-19.01.2024
IA-II-27.03.2024

vi). *The date on which orders were
Passed on the said application* : 16.07.2024

Stage of the suit: For hearing on IAs.

**-Sd/-
(K.S.Rotter)
Senior Civil Judge, Hukkeri.**

COMMON ORDERS ON IAs NO.I and II

The plaintiff has filed IA No.I under Order XXXIX Rules 1 & 2 R/w Section 151 of Civil Procedure Code, praying therein for restraining the defendants from alienating the suit schedule properties in any manner pending disposal of the suit.

2. The above said application is supported by the sworn affidavit of the plaintiff- Smt. Ratnavva W/o Bassappa @ Basavanni Kotabagi stating that, she along with the defendants No.1 to 3 constitute a joint Hindu family and the suit schedule properties are joint family ancestral properties of the plaintiff and the defendants No.1 to 3. The plaintiff and the defendants No.1 to 3 are in joint possession and enjoyment of the suit properties without any partition by metes and bounds and she is having 1/6th share in the suit properties. However, now the defendants colluding with each other got created false documents and trying to alienate the suit properties. Hence, the

plaintiff prayed for issuing temporary injunction against the defendants by stating that, she has got a prima facie case, balance of convenience lies in her favour and if temporary injunction is not granted, she will be put to irreparable loss and injury and prayed for allowing IA No.I.

3. On the other hand, the defendant No.3 has resisted the I.A.No.I by filing his detailed objections. The defendant No.3 in his objection denied the case of the plaintiff and contended that, he along with his brother, i.e. husband of plaintiff by name Basappa has already effected partition in the suit landed properties on 16.04.2002 in presence of the village elders and thereafter on 14.08.2002 they also partitioned their movables and other house and open spaces properties. Thereafter, defendant No.3 has sold out the land Sy.No.83/4 measuring 10.08 gunta in favour of his relative by name Chandrappa Balappa Kotabagi for his family legal necessity and payment of debts under the registered sale deed dated 21.07.2023. However, now the plaintiff has filed this false suit and by taking the advantage of ad-interim order of temporary injunction causing obstruction to his joint possession and enjoyment of the suit property. Hence, the defendant No.3 stated that, the plaintiff has neither prima

facie case nor balance of convenience lies in her favour. Accordingly, the said defendant No.3 prayed for dismiss the IA No.I filed under Order XXXIX Rules 1 & 2 of Civil Procedure Code.

4. Further the defendant No.3 has filed IA No.II under Order XXXIX Rule 4 R/w Section 151 of the Civil Procedure Code and prayed for vacating the interim order of temporary injunction granted against the defendant No.3 and in favour of plaintiff under the IA No.I in respect of suit properties. In support of I.A.No.II, the defendant No.3 has filed his sworn affidavit explaining the reasons for vacating the TI.

5. The plaintiff has filed objection to IA No.II and prayed for rejecting the said IA.

6. Both these applications are connected with each and require common discussion of facts and documentary evidence; as such these applications are taken together for consideration.

7. Heard arguments on these IAs by both the sides.

8. The points which arise for my consideration are as below:-

1. *Whether the plaintiff has made out prima-facie case for grant of TI as prayed in IA No.I?*

2. *Whether balance of convenience leans in favour of the plaintiff?*
 3. *Whether the plaintiff will be put to irreparable loss and injury if TI order is not granted?*
 4. *Whether the defendant No.3 has shown sufficient grounds for vacating the interim ex-parte TI order granted in favour of plaintiff under the IA No.I in respect of suit schedule properties?*
 5. *What order?*
9. My findings on the above points are as under:-
1. In the Negative.
 2. In the Negative.
 3. In the Negative
 4. In the Affirmative
 5. As per final order for the following:-

REASONS

10. **Points No. 1 to 4:** Admittedly, this is a suit filed by the plaintiff for the relief of partition and separate possession against the defendants in respect of the suit 'A' schedule properties. It is the case of the plaintiff that, the propositus of the family of plaintiff and defendants by name Shivappa died about 20 years back and his wife Bassavva also died long back. The propositus Shivappa died leaving

behind him, his two sons namely, Maruti and Bassappa @ Basavanni. The first son of propositus-Shivappa by name Maruti is the defendant No.3 in this suit and second son Bassappa @ Basavanni died about 15 years back leaving behind him, his wife Ratnavva/plaintiff and two sons namely, Irappa – defendant No.1 and Shivaningappa – defendant No.2. The plaintiff and defendants constitute joint Hindu family and suit 'A' schedule properties are their joint family ancestral properties. They are in joint possession and enjoyment of the suit properties. Further it is stated that, the names of plaintiff and defendants are jointly appearing in the RTC, they are paying taxes to the Government and also growing sugarcane, maize, soyabean, vegetables in the suit properties. The plaintiff alleged that, the defendants without her knowledge and with intention to cause wrongful loss to her have got created some documents and trying to alienate the suit properties. The plaintiff contended that, till today no partition effected in the suit properties in between plaintiff and defendants by metes and bounds, as such, she has requested the defendants not to alienate the suit properties. But the defendants have not heeded her request and acting adverse to the joint family interest. The plaintiff contended that she has got 1/6th share, defendants No.1 and 2 are also having 1/6th share each and defendant No.3 is having 1/2 share in the suit properties and

now the defendants knowing fully well about the share of plaintiff and without any grounds causing obstruction to her joint possession and also trying to alienate the suit properties. Hence, plaintiff contended that she has got a prima-facie case, balance of convenience lies in her favour and if the suit properties are alienated, she will be put to irreparable loss and hardship.

11. On the other hand, defendant No.3 has filed his written statement and contended that, the suit of the plaintiff as well as I.A.No.I is false, frivolous and not maintainable under law. The defendant No.3 denied the description of the suit properties as stated in schedule 'A' and stated that, plaintiff has not given the particulars of the house properties situated in the suit properties. Further the plaintiff has not given the boundaries of the suit properties and suit is not maintainable as per Order VII Rule 3 of CPC. Further the defendant No.3 stated that, the other joint owners of land Sy.No.96/2 and R.S.No.80 are not made as parties in this case. Hence, suit is not maintainable. Further it is stated that, the plaintiff has not added the properties bearing Sy.No.64, R.S.70 and R.S. No.75 of Noginahal village in this case and as such, suit is not maintainable. Further the defendant No.3 stated that, plaintiff has filed the present suit for

partition only in respect of share of her husband – Bassappa. But she has included defendant No.3 only to give harassment to him in this case. The defendant No.3 contended that, he has availed loan and for repayment of the said loan, he has sold out his share of land in Sy.No.83/4 measuring 10.08 guntas in favour of his relative by name Chandrappa Balappa Kotabagi on 21.07.2023 under the registered sale deed and handed over the possession of the said property. Further the defendant No.3 stated that, the husband of plaintiff by name Basappa and defendant No.3 and original propositus Shivappa have got partitioned their joint family properties in presence of the village elders of Noginahal village on 16.04.2002 and after the said partition, late Basappa and defendant No.3 are taken their respective shares and residing separately in their respective shares but plaintiff has suppressed the said fact. Further it is stated that after the said partition, the husband of plaintiff and her children have borrowed loan and got entered the same in the RTC of the suit properties. Further the defendant No.3 stated that, he is not in joint possession of the suit properties along with plaintiff. Since already partition was effected on 16.04.2002 and in the said partition, the husband of plaintiff- Basappa and his sons have taken their share as 10-gunta each in land Sy.No.83/6 and defendant No.3 has taken 10 gunta share and they are

enjoying their respective properties. Therefore, the defendant No.3 contended that, he along with the husband of plaintiff late Basappa has already entered into partition in the year 2002 and since then they are enjoying their respective shares. But now the plaintiff by describing the suit 'A' schedule properties stated that, she is in joint possession along with the defendants without any grounds and filed this false suit even though she has no share in the properties of defendant No.3. Therefore, defendant No.3 contended that, no cause of action arose to the plaintiff to file the suit. She has no prima-facie case and balance of convenience also not lies in her favour and if the temporary injunction is granted, he will be put to irreparable loss and hardship. Hence, defendant No.3 prayed for dismissing the I.A.No.I and allowing the I.A.No.II and prayed for vacating temporary injunction issued against him as per I.A.No.I.

12. The advocate for the plaintiff vehemently argued and submitted that, suit properties are joint family properties of the plaintiff and the defendants No.1 to 3, but, the defendants got created false documents and behind back of plaintiff trying to alienate the suit properties without allotting the legitimate share of the plaintiff. Hence, the advocate for the plaintiff prayed for IT against the defendants. On the

other hand, the advocate for defendant No.3 argued with force that, the defendants No.1 and 2 colluding with her mother/plaintiff have filed this false suit to give harassment to defendant No.3 and in this case defendants No.1 and 2 intentionally remained ex-parte. Further it is argued that, suit properties and other family properties already partitioned in between the defendant No.3 and his brother Basappa who is husband of plaintiff and father of defendant No.1 and 2 and as per the said partition, they are enjoying their shares of lands separately. But the plaintiff by suppressing the said facts filed this false suit for without any right, as such question of granting T.I against defendants does not arise at all. Hence, the advocate for defendants prayed for vacating the T.I order granted against the defendant No.3 and for dismissing IA No.I filed by the plaintiff under Order XXXIX Rules 1 & 2 R/w Section 151 of Civil procedure Code.

13. I have perused the pleadings and documents produced in this case. In this case, the plaintiff claiming that, she along with the defendants No.1 to 3 constitute a joint Hindu family and suit schedule properties are joint family properties of the plaintiff and the defendants and plaintiff is having 16th share but the defendants created false documents in respect of suit properties and trying to alienate the

suit schedule properties to stranger behind back of the plaintiff without allotting the legitimate share of the plaintiff. In support of his contentions plaintiff has produced certified copies of RTC extracts of the suit 'A' schedule properties. However, the documents produced by the plaintiff clearly show that, already suit properties are divided in between the defendant No.3 and his brother late Basappa, who is husband plaintiff and father of defendants No.1 and 2. This is also evident from the averments of plaint that, defendant No.3 is having $\frac{1}{2}$ share in the suit properties. So it appears that, defendant No.3 is in possession and enjoyment of his $\frac{1}{2}$ share in the suit properties by entering his name to his share of properties. However, now plaintiff instead of filing suit in respect of the properties allotted to her husband's half share, she has filed this suit by including all the properties of defendant No.3, which is not permissible under law.

14. Further it is pertinent to note that, the documents produced by the defendant No.3 clearly shows that, the present defendants No.1 and 2, who are remained ex-parte before this court, have filed another suit before the Civil Judge court Hukkeri in OS No.164/2021 and in the said suit, they have clearly admitted the partition in between their father-Basappa and present defendant No.3 in the suit properties. The

RTC extracts of the suit properties clearly shows that, the name of defendant No.3 to his ½ share of properties. Further after the said partition, the defendant has sold out his share of land in Sy.No.83/4 measuring 10.08 guntas in favour of his relative by name Chandrappa Balappa Kotabagi on 21.07.2023 under the registered sale deed and handed over the possession of the said property and this also evident from the RTC of said land. However, the plaintiff by suppressing these facts of said OS No.164/2021 filed this suit stating that, suit schedule properties are joint family properties of plaintiff and defendants and obtained order of ex-parte TI, which is not permissible under law. Therefore, the plaintiff has suppressed the pendency of OS No. 164/2021 and she is not approached this court with clean hands. Our Hon'ble High Court in a ruling reported in **2017(5) KCCR 225 in between Syed Yusuf and another Vs. Syed Noorulla and others**, it is held that, once the partition had occurred and the said facts is suppressed, the plaintiff is not entitle the relief of temporary injunction. Therefore, at this stage, looking to the facts and circumstances of the case, the question arises with respect to the maintainability of the suit of the plaintiffs. It is settled principle of law that, if the suit is not maintainable, the court has no jurisdiction to grant temporary injunction, hence for granting of temporary

injunction, the prima-facie case is to be looked into. The prima-facie case includes maintainability of suit also. Therefore, the party seeking the aid of the court must satisfy that there is serious question to be tried. At the hearing he should satisfy that, he is entitled to relief sought for by him or that he has a prima facie case to go to trial and that the courts order is necessary for protecting the irreparable loss. But in the present case on the basis of the documents and material available on record, it is clear that, plaintiff has not made out any case against defendant No.3. The interim relief can be granted only in the Prima facie cases but not in the present case on hand. Hence, on the basis of material available on record, I am of the considered opinion that, plaintiff has not made out Prima facie case and balance of convenience is also not in favour of plaintiff. On the other hand defendant No.3 has shown sufficient reasons for vacating the interim order of ex-parte temporary injunction granted against the defendant No.3 and in favour of plaintiff under the IA No.I in respect of suit properties as prayed in the I.A.No.II, Therefore, I answer the **points No.1 to 3 in the Negative and point No.4 in the Affirmative.**

15. **Point No.5:-** For the forgoing reasons I proceed to pass the following:

ORDER

The IA No.I filed by the plaintiffs under Order XXXIX Rules 1 and 2 R/w Section 151 of Civil Procedure Code is hereby dismissed.

No order as to costs.

Further, IA No.II filed by the defendant No.3 under Order XXXIX Rule 4 R/w Section 151 of Civil Procedure Code for vacating the ex-parte interim order of temporary injunction is hereby allowed.

Consequently, the Ex-parte interim T.I Order granted on 02.08.2023 is hereby vacated.

No order as to costs.

(Dictated to the stenographer, transcribed by her, corrected by me and then pronounced in open court on this 16th day of July 2024)

-Sd/-

(K.S.Rotter)

Senior Civil Judge, Hukkeri.