

KABG610029552022



**IN THE COURT OF THE CIVIL JUDGE & J.M.F.C.  
HUKKERI**

**Dated this 02<sup>nd</sup> day of August, 2023**

**PRESENT; SRI. AMBANNA.K  
B.COM. LLB.,[Spl]  
CIVIL JUDGE & JMFC, HUKKERI.**

**O.S.No. 265/2022**

**Between:**

Smt. Housabai W/o. Bharamu @ Bharama Harari and another  
.....Plaintiffs

**And:**

Smt. Laxmi Surendra Awati  
.. Defendant

**Parties to IA.I**

**Between:**

Smt. Housabai W/o. Bharamu @ Bharama Harari and another  
.....Applicants/ Plaintiffs

**And :**

Smt. Laxmi Surendra Awati  
.. Opponent/Defendant

**ORDER ON IA.NO.I**

The counsel for plaintiffs filed this IA No.I under Order XXXIX  
Rule 1 and 2 of CPC against the defendant for grant of temporary

injunction restraining the defendant from alienating the suit schedule properties till the disposal of suit by allowing the application in the interest of justice.

2. In the sworn affidavit annexed with IA No.1, the plaintiff No.1 stated that the plaintiff No.2 is her daughter and they have filed suit against the defendant for relief of declaration and permanent injunction. Further it is stated that the agricultural land bearing RS No.153/3, 153/17, 153/23 situated at Sarapur village are the suit schedule properties are the ancestral properties of father of the plaintiff by name Bharamu @ Bharama Bhimappa Harari. On 02.11.2022 the said Bharamu was died. After the death of Bharamu the plaintiffs are in actual possession and enjoyment of the suit properties by way of inheritance. Now, the name of defendant was appeared in the record of rights of suit schedule properties. Further they came to know that, on 19.12.2014 the defendant by colluding with the revenue officials mutated the suit lands through Diary No.MRH.44/2014-15. Further it is stated that, the plaintiffs are the absolute owners of the suit schedule properties. That being so the defendant has taken undue advantage of their name entered in the records and they are going to alienate the suit properties to third party. Therefore it is necessary to restrain the alienation by way of Temporary Injunction. Therefore she prayed to allow the application.

3. Per contra the defendant has filed detailed objection to IA. In the objection, the defendant denied the entire claim of the plaintiff. They have specifically denied the entire contents of the affidavit. It is

submitted that, the mother of the defendant by name Ratnavva is the legally wedded wife of Bharamu @ Bharamappa and she is the only daughter to them. The plaintiffs No.1 is not legally wedded wife of Bharmu and the plaintiff No.2 is not daughter of the Bharamu. During the life of said Bharamu and his mother Ratnavva have mutated the suit lands in the name of defendant as they having love and affection towards the defendant. The plaintiff suppressed the material facts and filed false suit against the defendant. The defendant is in possession of suit land by growing crops. The question of alienation of the suit lands does not arise at all. The plaintiffs have not made out the prima facie case. The plaintiff has filed false suit in order to give harassment to the defendants. Hence they prayed to reject the application.

4. Heard and perused the available materials on record for consideration of IA No.I.

5. The points that arise for my consideration are :

- 1) Whether the plaintiff has made out prima-facie case to grant of temporary injunction as prayed in I.A.No-I ?
- 2) In whose favour the balance of convenience lies?
- 3) Whether the plaintiff will be put to irreparable loss or injury, if temporary injunction is not granted?
- 4) What order?

6. My findings to the aforesaid points are as below:

Point No. 1: In the affirmative

Point No. 2: In favour of plaintiffs

Point No. 3: In the affirmative

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

### **REASONS**

7. **POINT No.1:** It is the specific case of plaintiffs that they have filed suit against the defendant for declaration of title and permanent injunction. It is the assertion of the plaintiff that the agricultural land bearing RS No.153/3, 153/17, 153/23 situated at Sarapur village are the suit schedule properties are the ancestral properties of father of the plaintiff by name Bharamu @ Bharama Bhimappa Harari. On 02.11.2022 the said Bharamu was died. After the death of Bharamu the plaintiffs are in actual possession and enjoyment of the suit properties by way of inheritance. Now, the name of defendant was appeared in the record of rights of suit schedule properties. Further they came to know that, on 19.12.2014 the defendant by colluding with the revenue officials mutated the suit lands through Diary No.MRH.44/2014-15. Further it is stated that, the plaintiffs are the absolute owners of the suit schedule properties. That being so the defendant has taken undue advantage of their name entered in the records and they are going to alienate the suit properties to third party. Therefore it is necessary to restrain the alienation by way of Temporary Injunction. Hence this application.

8. It is specific contention of defendant that the mother of the defendant by name Ratnavva is the legally wedded wife of Bharamu @ Bharamappa and she is the only daughter to them. The plaintiffs No.1 is not legally wedded wife of Bharmu and the plaintiff No.2 is not

daughter of the Bharamu. During the life of said Bharamu and his mother Ratnavva have mutated the suit lands in the name of defendant as they having love and affection towards the defendant. The plaintiff suppressed the material facts and filed false suit against the defendant. The defendant is in possession of suit land by growing crops.

9. During the course of arguments the counsel for the plaintiff has argued that, the plaintiffs are the absolute owners of the suit schedule properties by way of inheritance as they are the legal heirs of the deceased Bharamu @ Bharamappa. On the other hand the defendant has specifically contended that the plaintiffs No.1 is not the wife of deceased Bharamu and plaintiff No.2 is not the daughter of deceased Bharamu. To decide the said fact it requires the full fledged trial. Therefore prayed to grant temporary injunction against defendant in the interest of justice.

10. In this regard this Court relied the decision reported in the **M.F.A No.1891/2021 dated 23.07.2021 in between Sri Rocky Muthappa Rai Vs. Smt. Anuradha Muthappa Rai**, wherein the Hon'ble High court of Karnataka pleased to held that, *the trial court has to refer the averments made in the plaint and written statement along with IA and affidavit while deciding and application for temporary injunction. Further it is directed to the all parties not to alienate, encumber or crate third party rights over the suit schedule properties.*

11. It is important to note here that the land bearing No. RS No.153/3, 153/17, 153/23 situated at Sarapur village are standing in

the name of defendant herein. If the defendant has sold out the suit schedule properties, there will be multiplicity of the proceedings. At this juncture, it could be seen that the defendant trying to alienate the suit schedule properties to deprive the rights of plaintiff. Hence, it is just to restrain her from alienation of suit schedule properties to the third parties. Therefore, the plaintiffs have made out "prima facie" case for trial, in the suit for declaration and permanent injunction. They have made out "prima facie" case to grant temporary injunction. **Hence, this Point No.1 is answered in the Affirmative.**

12. **POINTS NO.2:** In view of answering point No.1 this court opined that, the plaintiffs have made out "prima facie case". In order to get equitable relief of temporary injunction, the parties must prove "prima facie" case first. As I have already adverted that the plaintiffs have made out "prima facie" case. Now, this court has to consider in whose favour the balance of convenience lies. As discussed above the plaintiffs have substantiated their contention that, the suit schedule properties are the ancestral properties of the deceased Bharamu. Therefore, in my opinion, the balance of convenience lies in favour of the plaintiffs. **Hence this point is answered accordingly.**

13. **POINT NO. 3:** In view of the answer given to the point No. 1 and 2, if temporary injunction is not granted, the plaintiffs will be put to untold hardship and irreparable loss and injury. In such being the case nothing harmful caused to the defendant, if temporary injunction order is granted by restraining defendant from alienating the suit schedule properties. Therefore, this court is of the considered opinion

that plaintiffs are entitled for grant of temporary injunction as prayed for. **Hence, the point No.3 is answered in the Affirmative.**

14. **POINT NO.4:** For the foregoing reasons and discussion made in the above points, this court proceed to pass the following order.

**ORDER**

**I.A.No.I filed by the plaintiffs U/o 39 Rule  
1 and 2 CPC is hereby allowed.**

**Consequently, the defendant is hereby  
restrained from alienating the suit schedule  
properties to anybody in any manner till  
disposal of suit.**

**No order as to costs.**

(Dictated to the stenographer directly on the computer, corrected by me and then pronounced in open court on this the 02<sup>nd</sup> day of August, 2023)

**(AMBANNA.K)  
Civil Judge & J.M.F.C. Hukkeri**

Order pronounced in the open court  
(vide separate order)

**ORDER**

**Civil Judge & J.M.F.C. Hukkeri**