

KABG700006562021



**IN THE COURT OF THE SENIOR CIVIL JUDGE & J.M.F.C.,
KHANAPUR**

AT : KHANAPUR.

PRESENT

**Shri.Chandrashekhar Yallappa Talawar,
B.A.,LL.B.(Spl),
Senior Civil Judge and JMFC,
Khanapur.**

Original Suit No.225/2021

Dated this the 29th day of April, 2025

Plaintiffs:-

1. Shri.Abdulkareem Abdulkhadar Patil
and others.

//V/s//

Defendants:-

1. Smt.Jaibunissa w/o Gouselal Patil
and another.

I.A.No.I**Applicants/Plaintiffs:-**

1. Shri.Abdulkareem Abdulkhadar Patil,
Age: 50 years, Occ: Agriculture,
R/o: Ramapur,, Tal: Khanapur.
(Mobile No.98804 21464)
2. Shri.Riyazahmed Abdulkhadar Patil,
Age: 47 years, Occ: Agriculture,
R/o: Ramapur,, Tal: Khanapur.
3. Shri.Basheerahmed Abdulkhadar Patil,
Age: 43 years, Occ: Agriculture,
R/o: Ramapur,, Tal: Khanapur.

(By Shri.V.N.Patil, Advocate)

//V/s//

Opponents/Defendants:-

1. Smt.Jaibunissa w/o Gouselal Patil,
Age: 55 years, Occ: Agriculture,
R/o: Ramapur,, Tal: Khanapur.
2. Smt.Hameedabanu w/o Mehamood Bagwan,
Age: 47 years, Occ: Agriculture,
R/o: Tilak Nagar Alanavar, Tal: Alanvar,
Dist: Dharwad.

(D.1 by Shri.I.B.L. Advocate
D.2 by Shri.S.S.H. Advocate)

ORDER ON I.A.No.I

The applicants/plaintiffs have filed this I.A. U/O 39 Rules 1 and 2 R/w Section 151 of CPC praying to restrain the defendant No.2 restraining her, her agents, servants, coolies etc., from alienating the suit schedule property bearing R.S.No.124/3, R.S.No.124/4 of Surapur village, Tal: Khanapur by way of sale, mortgage, lease, gift or creating any charge over the suit property in favour of third party, pending disposal of the suit.

2) In the annexed affidavit, the plaintiff No.1 has stated that, he had filed this suit seeking a relief of declaration with consequential permanent injunction against the Defendants pertains to the suit scheduled property involved in the case and also sought for claiming preferential right of pre-emption to purchase the land bearing R.S.No.124/4 shown in record of right which is a part and parcel of the land bearing R.S.No.124/3.

3) It is further stated that, he is the joint owner and in possession of the land bearing R.S.No.124/3 measuring 04 Acre 21 Gunthas along with Defendant No.1. There is no divisions in

the land bearing R.S.No.124/3 which in all measures 04 Acre 21 Gunthas but, the Defendant No.1 colluding with Defendant No.2 it seems managed and shown in record of right as R.S.No.124/3 and 124/4. The land bearing R.S.No.124 was earlier standing in the name of late Abdulkhadar Khatahsab Patil and Abdulgani Khatahsab Patil, jointly and after death of late Abdulkhadar Khatahsab Patil, inherited the same and became tenant in common i.e. joint owners and in possession. However some portion belongs to uncle of the plaintiffs late Shri.Abdulkhadar Khatahsab Patil, the same has been purchased by the Defendant No.1 who is none else but, one of the family member of the plaintiffs. Hence the plaintiffs and Defendant No.1 are the joint owners and in joint possession and their names have been shown in concerned records and as such the suit schedule property is in peaceful possession, wahivat and enjoyment jointly till today. In fact there is no divisions as such showing property as R.S.No.124/3 and R.S.No.124/4.

4) It is further stated that, such being the fact it seems the Defendant No.1 in order to obtain unlawful gain managed to create a false and frivolous sale deed showing record of right as R.S.No.124/4 and manipulated a false sale deed in favour of Defendant No.2 on 02-09-2020, by describing false and frivolous boundaries in the alleged sale deed. The Defendant No.2 who is no way concerned to the family of the plaintiffs as well as to the properties of the plaintiffs and she being stranger cannot come in joint possession along with the plaintiffs since there is no divisions in the land bearing R.S.No.124/3 and 124/4. Hence the Defendant No.2 has no right, title or interest over the joint portion belongs to the plaintiffs and without seeking a relief of general partition the Defendant No.2 cannot oust or threatened to the plaintiffs in their joint possession, wahivat and enjoyment.

5) It is further stated that, the said transaction has been brought to their knowledge just in the month of September 2021, when this Defendant No.2 threatened as well as told not

to disturb in her possession contending and saying that she has purchased the portion of land bearing R.S.No.124/3 showing and describing as R.S.No.124/4. Hence the said number is bogus and has been managed by the revenue authorities colluding with the Defendants No.1 and 2. Immediately after coming to know regarding alleged transaction of sale all the plaintiffs with intervention of respectable panchas requested both the Defendants to purchase the property at a price which was a transacted in between the Defendants No.1 and 2 and it is the right accrued by the plaintiffs i.e. right of pre-emption which is recognized in their community and under the law requested both the defendants but, the Defendants by one or other reason postponed and ultimately denied the proposal given by the plaintiffs. Not only that even the Defendant No.2 on the basis of alleged illegal transaction as mentioned above threatened to the plaintiffs to forcibly dispossess and oust from the joint possession, wahivat and enjoyment over an area of 04 Acre 21 Gunthas since there is no divisions as such either by metes and

bounds or there is no partition as such as described in the alleged sale deed. Even the Defendant No.2 further threatened to alienate the portion of the land purchased and described as R.S.No.124/4 to the strangers. Hence the plaintiffs have no other alternate but, constrained to file this present suit seeking a relief of declaration with consequential permanent injunction as well as claiming a relief of preferential right of pre-emption to purchase the property as transacted in between the defendants No.1 and 2.

6) It is further stated that, the plaintiffs have got good prima-facie case and the balance of convenience lies in their favour. The defendant No.2 has no to come in joint possession along with the plaintiffs without seeking a suit for general partition and as such the alleged interference on the part of the Defendant No.2 will certainly obstruct plaintiffs' peaceful possession and enjoyment over the land bearing R.S.No.124 which is shown in record of right as R.S.No.124/3 and 124/4. Hence in order to protect the right, title and interest as well as in

order to protect the subject matter as it is an ad-interim injunction may kindly be granted. Hence prayed to allow the I.A.No.1.

7) The defendant No.2 has filed her objections to the I.A.No.1 contending that, the plaintiffs colluding with defendant No.1 have filed this suit against the defendant No.2 in order to harass her. The plaintiffs have not issued notice to the defendant No.1 in respect of purchase of the suit property. The defendant No.2 after verifying the documents and after coming to know that the defendant No.1 is the only owner of the suit property has purchased the suit property. She further submitted that she has filed suit bearing O.S.No.174/2022 against the present plaintiffs and defendant No.1 before the Civil Judge & JMFC, Khanapur, which is still pending. The plaintiffs have filed the present suit without there being any cause of action. She further contended that she is in possession of the suit property from the date of purchase till today. She further contended that plaintiffs and defendant No.1 belong to Muslim community and hence

they have no right to file the suit for partition. She further contended that she has purchased the suit property bearing Sy.No.124/3 in accordance with law. She has purchased the said property during the year 2020 and since then she is in possession of the said property. The defendant No.1 has got knowledge of the said fact but as there is hike in the market value of the suit property, the plaintiffs have filed the present suit against the defendant No.2 only with an intention to harass her. Hence prayed to reject the I.A.No.1.

8) On the basis of the said rival contentions, the following points arise for consideration:-

- 1. Whether the Plaintiffs have made out a prima facie case ?**
- 2. Whether the balance of convenience lies in favour of the Plaintiffs ?**
- 3. Whether the Plaintiffs will be put to irreparable loss, if an order of temporary injunction is not granted in their favour ?**
- 4. What order ?**

9) Heard the arguments. Perused the entire materials placed on record.

10) The findings on the above points are as under:-

Point No.1 : In the negative

Point No.2 : In the negative

Point No.3 : In the negative

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

REASONS

11) **Points No.1 to 3:-** All these points are interconnected with each other. So they are taken up together for common discussion to avoid repetition of facts.

12) The plaintiffs filed a suit for declaration and injunction against the defendants contending that the plaintiffs are the joint owners of the suit schedule properties along with defendants No.1 and declare that the sale deed dated 2.9.2020 executed by defendant No.1 in favour of defendant No.2 is not binding them and also for declaration that the plaintiffs have got right of pre-emption, i.e. right of preferential to purchase the suit portion and also seeking permanent injunction restraining

the defendant No.2 from interfering, disturbing or forcibly ousting the possession and enjoyment over the suit properties.

13) During the pendency of the suit, the plaintiffs also filed this application seeking to restrain the defendant No.2 from alienating, sale, mortgage, lease, gift or creating any charge over the suit property in any manner by way of ad-interim temporary injunction pending disposal of the suit reiterating the plaint averments.

14) On the other hand the defendant No.2 has filed objection in the form of written statement and contended that she had purchased the suit property bearing Sy.No.124/3 from defendant No.1 on 20.9.2020 under a registered sale deed. Since from the date of sale deed, the defendant No.2 is in possession and enjoyment of the suit property bearing R.S.No.124/3. Further contended that family members of the plaintiffs by name Liyakatali Gouslal Patel has filed O.S.No.39/2021 before Pri.Civil Judge & JMFC Court, Khanapur. In which she has made party as defendant No.5 and in that suit

interim application U/O 39 Rule 1 and 2 also filed against the present defendant No.2 and same was dismissed. Thus the plaintiff has not come to the Court with clean hands and have suppressed the material facts. Hence, prayed to dismiss the application.

15) To substantiate the claim of the plaintiffs, the plaintiffs have produced 6 documents out of that marked at Exs.P.1 to P.5. Exs.P.1 to P.3 are the RORs, Ex.P.4 and P.5 are the P.T. sheets. Copy of the sale deed dated 6.1.2021. Ex.P.1 is the RTC of the suit property bearing R.S.No.124/4 standing in the name of the plaintiffs for the year 2021-2022, Ex.P.2 is the RTC of the land property bearing Sy.No.124/2, standing in the name of defendant No.1 for the year 2021-22. Ex.P.3 is the RTC of suit property bearing R.S.No.124/3 measuring 2 acres 11 guntas standing in the name of defendant No.1 for the year 2021-22, Ex.P.4 and P.5 are the P.T. sheets shows that location of the suit properties. On perusal of the copy of the sale deed dated 16.1.2021 which discloses that the defendant No.1 had sold the

suit property R.S.No.124/3 measuring 2 acres 11 guntas to the defendant No.2 for valuable consideration amount of Rs.6,88,000/- by executing the registered sale deed. Further the above said sale deed clearly discloses that from the date of purchase the defendant No.2 is in possession and enjoyment over the suit property. Thus prima facie, it clearly goes to show that the defendant No.2 is in actual possession and enjoyment over the suit property bearing R.S.No.124/3. Hence, the contention of the plaintiff that the plaintiffs and defendant No.1 are the joint owners and in joint possession of the suit property bearing R.S.No.124/3 cannot be accepted at this juncture. Hence, the plaintiffs have not made out prima facie that they are in actual possession over the suit property R.S.No.124/3. When the plaintiffs have no prima facie case, the Court cannot restrain the defendant No.2 from alienating the suit property bearing R.S.No.124/3.

16) It is well settled that before granting injunction and considering prayer for discretionary relief, the Court must be

satisfied that the party praying for relief has a prima facie case and balance of convenience is also in its favour. While granting injunction, if any, the Court is also required to ascertain whether refusal to grant injunction will cause irreparable loss to such party.

17) The decision of the Hon'ble High Court of Karnataka in the case of **Gowrishankara Swamigalu V/s Siddhaganga Mutt reported in ILR 1989 Kar 1701**, it is observed that existence of prima facie case harbinger to investigate other aspect. If no prima facie case, balance of convenience, irreparable loss etc., need no consideration-existence of prima facie case does not permit leap-frogging by the plaintiff to injunction directly without evaluation of other considerations. Unmindful of other consequences-Even if unbeatable prima facie exists injunction not to be granted. It consequences of grant, detrimental in nature. This decision is relevant for the case on hand. It is pretrial stage, it is unsafe to decide about the rights of the parties and more over, after discussing elaborately the above

Point Nos.1 to 3, this Court is opinion that the plaintiffs have not made out a prima facie case for grant of interim order and no balance of convenience and irreparable injury lies in favour of the plaintiffs. Hence I answer the **Points No.1 to 3 in the negative.**

18) **Point No.4:-** In view of my findings on points No.1 to 3, I proceed to pass the following...

ORDER

**The I.A.No.1 filed by the
plaintiffs/applicants U/O 39 Rules 1 and 2**

R/w Section 151 of CPC is rejected.

Parties to bear their own costs.

[Dictated to the Stenographer directly on Computer, the same is revised and corrected by me and then pronounced in the Open Court on this the 29th day of April, 2025].

sd/-

**(Chandrashekhar Yallappa Talawar)
Senior Civil Judge & JMFC,
Khanapur.**