

KABG900011032019



IN THE COURT OF THE CIVIL JUDGE & J.M.F.C.
AT MUDALAGI

PRESENT:-

SMT. JYOTHI PATIL

B. A., LL.M.

Civil Judge And JMFC At Mudalagi

Dated this the 09th DAY OF APRIL, 2025

O.S.No.53 / 2019

PLAINTIFF:

01. Shri. Lakkappa Ramappa Yadranvi

//VERSUS//

DEFENDANTS:

01. Sri. Ramappa Laxman Yadranvi
And Others.

I.A. No.V

APPLICANT :

01. Shri. Lakkappa Ramappa Yadranvi

... Plaintiff

(Reptd. by Shri. M.B.B. Advocate.)

//VERSUS//

OPPONENTS:

01. Sri. Ramappa Laxman Yadranvi
And Others.

... Defendants

(Deft. No.1 to 6 R/by Shri. R.S.T. Advocate.)

(Deft. No.7 to 13 Ex-parte)

(Deft. No.14 R/by Shri. M.L.S. Advocate.)

(Deft. No.15 R/by Shri. M.L.S. Advocate.)

ORDERS ON I.A.No.V FILED U/ORDER**XXXIX RULE 1 and 2 R/W SEC.151 OF C.P.C.**

The present suit filed by plaintiff against the defendant No.1 to 15 for the relief of Partition and Separate Possession.

- 02.** In the plaint it is averred that the suit schedule properties being ancestral properties of plaintiff and defendants wherein plaintiff is having 1/6th share out of his father's 1/3rd share in the suit schedule properties. Further, in the plaint it is averred that the propositus Siddappa was died leaving behind his 03 sons by name Laxman, Shivappa and Bhimappa and said 03 sons divided the suit schedule properties. Further, it is averred that Laxman was also died and he has got 02 wives, first wife by name Tangevva who got 02 sons and one daughter by name deceased Yallappa, Ramappa-(D-1) and Jakkavva -(D-15). After the death of Tangevva deceased Laxman got married with second wife, Lakkavva-(D-13), the said Lakkavva had got one son and one daughter by name Dhareppa-(D-7) and (Indarvvva-D-14). Further Ramappa (D-1) is the husband of defendant No.2

Shantavva who have got 03 sons and daughter i.e. present plaintiff and defendant No.3 to 6. Further, it is averred that plaintiff is the son and brother of defendant No.1 to 6 and deceased Yallappa was also died leaving behind his wife defendant No.8 sons and daughter i.e. defendant No.9 to 12.

03. Further, it is averred that plaintiff, defendant No.1 to 6, 8 to 12 & 15 were jointly cultivating the lands as they are members of Hindu joint family governed by Hindu law. Further, averred that the suit schedule properties are the ancestral joint family properties of plaintiff and defendants are in joint possession, use and enjoyment of the same and there is no partition over the suit schedule properties between plaintiff and defendants. Further, averred that the suit schedule properties Sl.No.1 bearing Sy.No.190/7 is standing in the name of defendant No.7, 9 & 11 and Sl.No.2 bearing Sy.No.190/1+2+3+4+5/3 is standing in the name of defendant No.7 and 9 to 12. Further, averred that defendants without the knowledge of plaintiff and behind his back mutated the name over the suit schedule Sl.No.1 and 2 properties. Further, averred

that defendant No.7 and 14 are the illegitimate Children and they do not had any share over the suit properties and not cultivating the suit properties thereby the plaintiff prayed for 1/6th share out of 1/3rd share of his father over the suit schedule properties.

04. Further, the defendant No.1 filed consent Written Statement thereby admitted all the plaint averments and same was adopted by defendant No.2 to 6 by way of adoption memo. Further, when the case was staged for issues Sri. M.B.B. Advocate for plaintiff filed N.O.C. and also filed I.A.No.5 U/Order 39 Rule 1 and 2 thereby prayed for issuance of temporary injunction against defendant No.7, 9 & 11 restraining them from alienating or mortgaging the suit schedule properties Sl.No.1 and 2 till disposal of the suit.

05. The defendant No.7 to 13 placed Ex-parte and advocate for defendant No.1, 4 and 15 filed objection to I.A.No.5 and contended that at initial stage this Court ordered and passed Temporary injunction dated 28-06-2019 and same was not extended by plaintiff due to Covid-19. Thereafter, the plaintiff did

not approached this Court and did not filed Temporary Injunction application. Further, it is denied by the counsel for defendants that defendants did not removed the stay orders extended over the Record of rights of suit schedule properties and did not tried to alienate the suit schedule properties. Hence, prayed for rejection to said application.

06. Heard both side and perused.

07. Upon hearing arguments and on perusal of materials placed on record the following points that would arises for my consideration;

P O I N T S

1. Whether the plaintiff has established prima facie case?
2. Whether the balance of convenience lies in favour of plaintiff?
3. Whether irreparable loss or hardship will be caused to the plaintiff if injunction is not granted?
4. What order?

08. My findings to the above points are as under;

Point No.1 - In the Affirmative

Point No.2 - In the Affirmative

Point No.3 - In the Affirmative

Point No.4 - As per order

for the following;

REASONS

09. POINT NO.1 to 3:- Since these points are interlinked with each other, they are taken up together for consideration in order to avoid repetition, as here under;

The present suit filed by the plaintiff against defendants for the relief of Partition and Separate Possession. Now, the plaintiff came up with present application and prayed for issuance of Temporary Injunction against defendant No.7, 9 and 11 restraining them from alienating or mortgaging the suit schedule properties. However, it is pertinent to note that though the counsel for defendant No.14 and 15 denied that they are not trying to alienate the suit schedule properties by removing the stay orders passed by this

Court on I.A.No.1. It is to be noted that since the suit is pending for trial and consideration as it takes its own time to decide on merits of the case, if at this juncture the suit schedule properties were sold out or transferred in favour of third party it will lead to multiplicity of proceedings and plaintiff will be put into irreparable loss. However, if I.A.No.V is allowed restraining the defendant No.7, 9 & 11 from alienating or mortgaging the suit schedule properties no hardship or injury caused to the defendants, if present I.A. is not allowed the plaintiff will be put into irreparable loss as same cannot be compensated in terms of money. Hence, for the aforementioned reasons and discussions I answered Point No.1 to 3 in the Affirmative.

- 10. POINT NO.4 :-**In view of the reasons assigned above, I proceed to pass the following;

ORDER

I.A.No.V filed by the plaintiff
U/Order 39 Rule 1 and 2 R/w
Sec.151 of C.P.C. is hereby
allowed.

The defendant No.7, 9 and 11
are hereby restrained from alienating
the suit schedule properties
bearing R.S.No.190/7 and
R.S.No.190/1+2+3+4+5/3 of Naganur
village in Mudalagi Taluka, till further
orders.

(Dictated to the stenographer, transcript computerized by him, corrected and then pronounced by me in
the open Court court on this the 09th day of APRIL, 2025.)

Sd/-

(SMT. JYOTHI PATIL)
CIVIL JUDGE & JMFC. MUDALAGI.

