

KABIO20009002024



IN THE COURT OF II ADDL. SENIOR CIVIL JUDGE, BALLARI.

Present : Smt. Nasrat Mukhtar Ahmed Khan,
B.A. LLB. LL.M
II Addl. Senior Civil Judge, Ballari.

O.S No.123 of 2024

Dated this the 27th day of March, 2025

Plaintiffs :

1. Smt. Yashodamma d/o. Pakkirappa, w/o. Rangayya, Aged about 52 years,
2. Sri. Chalapathi s/o. late Pakkirappa, Aged about 50 years, landlords, R/o. Bevinahalli village, Kakka Bevinahalli Post, Ballari.

(Plaintiffs By Sri. P. R. B. Advocate)

Vs.

Defendants :

1. Smt. Bhagyalakshmi @ Lakshmi Devi d/o. late Pakkirappa, w/o. Chakali Lingamaiah, Aged about 51 years, R/o. 20-212-a18, Ganga Nagar, Guntakal. Now at C/o. Chalapathi, R/o. Bevinahalli village, Kakkabevinahalli Post.
2. Sri. B. S. Raviraja s/o. late Pakkirappa, Aged about 46 years,

3. Venkateshwarulu Since dead by his legal heir Smt. Jayamma w/o. late Venkateshwarulu, Aged about 63 years,
4. Lakshmannma. Since dead by his legal heirs.
5. Durganna s/o. late Lakshmanna, Aged about 48 years,
6. Sunitha d/o. late Lakshmanna, w/o. Seena, Aged about 45 years,
7. Durgamma d/o. late Lakshmanna, w/o. Ravi Kumar, Aged about 43 years,
8. Ramesh s/o. late Lakshmanna, Aged about 40 years,
9. Kaniksha s/o. late Lakshmanna, Aged about 35 years,
10. Shidesh s/o. late Lakshmanna, Aged about 30 years,

All are landlords and residents of House No.391, Thimmanagoudara Oni Bevinahalli village, Kakka Bevinahalli Post, Ballari.

11. Smt. Sunithamma w/o. late Sree Ramulu, Aged about 35 years,
12. Smt. Chakali Lakshmi Devi d/o. late Ramudu @ Venkataramana, Aged about 40 years,
13. Oblesh s/o. late Ramudu @ Venkataramana, Aged about 34 years,

14. A. Nagaraj s/o. late Ramudu @ Venkataramana,
Aged about 33 years,

All are landlords and residents of Near
Jummahalamma Gudi, Bevinahalli village, Kakka
Bevinahalli Post, Ballari Taluk.

**(Defendants No.1, 2, 3, 5 to 10 By Sri. R.S.R
Advocate)**

(Defendant No.4 Dead)

(Defendant No.11 to 14 By Smt A. M. B. Advocate)

Parties to I.A No.II

Applicants/Plaintiffs :

1. Smt. Yashodamma d/o. Pakkirappa, w/o.
Rangayya, Aged about 52 years,
2. Sri. Chalapathi s/o. late Pakkirappa, Aged about 50
years, landlords, R/o. Bevinahalli village, Kakka
Bevinahalli Post, Ballari.

(Plaintiffs By Sri. P. R. B. Advocate)

Vs.

Respondents/Defendants :

1. Smt. Bhagyalakshmi @ Lakshmi Devi d/o. late
Pakkirappa, w/o. Chakali Lingamaiah, Aged about
51 years, R/o. 20-212-a18, Ganga Nagar,
Guntakal. Now at C/o. Chalapathi, R/o.
Bevinahalli village, Kakkabevinahalli Post.

2. Sri. B. S. Raviraja s/o. late Pakkirappa, Aged about 46 years,
3. Venkateshwarulu Since dead by his legal heir Smt. Jayamma w/o. late Venkateshwarulu, Aged about 63 years,
4. Lakshmannma. Since dead by his legal heirs.
5. Durganna s/o. late Lakshmanna, Aged about 48 years,
6. Sunitha d/o. late Lakshmanna, w/o. Seena, Aged about 45 years,
7. Durgamma d/o. late Lakshmanna, w/o. Ravi Kumar, Aged about 43 years,
8. Ramesh s/o. late Lakshmanna, Aged about 40 years,
9. Kaniksha s/o. late Lakshmanna, Aged about 35 years,
10. Shidesh s/o. late Lakshmanna, Aged about 30 years,

All are landlords and residents of House No.391, Thimmanagoudara Oni Bevinahalli village, Kakka Bevinahalli Post, Ballari.

11. Smt. Sunithamma w/o. late Sree Ramulu, Aged about 35 years,
12. Smt. Chakali Lakshmi Devi d/o. late Ramudu @ Venkataramana, Aged about 40 years,

13. Oblesh s/o. late Ramudu @ Venkataramana, Aged about 34 years,
14. A. Nagaraj s/o. late Ramudu @ Venkataramana, Aged about 33 years,

All are landlords and residents of Near Jummahalamma Gudi, Bevinahalli village, Kakka Bevinahalli Post, Ballari Taluk

(Defendants No.1, 2, 3, 5 to 10 By Sri. R.S.R Advocate)
(Defendant No.4 Dead)
(Defendant No.11 to 14 By Smt A. M. B. Advocate)///

Order on I.A No.II

The plaintiffs have filed I.A No.II under Order 39 Rule 1 & 2 R/w Section 151 of CPC, praying this Court to grant ad interim injunction restraining the defendants, their henchmen, servants, agents, whomsoever it may be claiming through defendants etc., from alienating or transferring by mutation and etc., meddling or etc in any manner in and over suit schedule property of plaintiff either directly or indirectly, till pending disposal of the suit and by memo dated 25.02.2025 counsel has restricted the prayer to only alienation.

2. The plaintiff no.2 has filed an affidavit accompanying said I.A averring that, the plaintiffs are sister and brother, defendant no.1 & 2 are brother and sister and plaintiffs and defendant no.1 & 2 are children of late Pakirrappa. The suit schedule properties were ancestral properties acquired by Rangappa and Rangappa had three sons by name Pakirrappa who expired in the year 2022 leaving behind the plaintiff and defendant no.1 & 2, Venkateshulu who expired around 2018 leaving behind 3rd defendant and Lakshmanna who expired around 2015 leaving behind defendant no.5 to 10. The defendant no.11 to 14 are legal heirs of late Ramudu who allegedly claimed to be legal heirs of Shivanna and Shivanna and Rangappa were brothers. The suit schedule properties are ancestral properties and it is grandfather of Rangappa who was in peaceful possession and enjoyment of suit schedule properties prior to 1967-68 to this day and after the death of said Rangappa, late Pakirrappa, Venkateshulu and Lakshmanna enjoyed suit schedule properties and after their death, the plaintiffs and defendant no.1 to 4 are in possession and enjoyment of suit schedule properties without any interruption.

3. The bonafide enquiry confirmed that, there was partition amongst the brothers of Rangappa and respective parties took their shares and the brother of Rangappa sold his share during his life time but, Rangappa has retained his share property. The defendant no.11 to 14 suppressing material facts after lapse of around 55 years have raised the claim for first time knowing that, the plaintiff and defendant no.1 to 4 are rustic villagers and no document is with them. The claim of partition is in respect of ancestral properties and there was no division. The plaintiffs and defendant no.1 to 4 are members of joint family and they have undivided share and are in constructive possession. The defendant no.2 to 4 are looking after and maintaining the suit schedule properties. With respect to item no.2 it is learnt that, around 2022 the defendant no.11 to 14 made an application for change of khatha in respect of Sy.No.104 measuring 6.32 acres suppressing the material facts and managed to get void Order from Tahsildar and said Order is baseless and Sy.No.104 measuring 6.32 acres is ancestral property and objection is filed in RRT Dispute No.562/2022 and Order of Tahsildar is nominal and without any

base and the plaintiffs came to know that, the defendant no.11 to 14 are making efforts to alienate item no.2 of suit schedule properties and the defendants amongst themselves are alienating the suit schedule properties without knowledge of the plaintiffs and defendants have no manner of right, title and interest to sell the said properties without determination of rights. Hence pray the Court to allow the application.

4. The defendant no.1 to 3 and 5 to 10 counsel has submitted no objection to said I.A and defendant no.4 has expired. The defendant no.14 filed written statement and defendant no.11 to 14 filed adoption memo adopting the written statement contentions as objections to I.A No.2. In the written statement it is contended that, the defendant no.11 to 14 are legal heirs of late Ramudu @ Venkataramana and grandsons and daughters of late Shivanna s/o. Pakirappa and denied plaint averments and contends that, the landed properties bearing Sy.No.95/D measuring 4.20 acres, Sy.No.94/C measuring 4.46 acres, Sy.No.104 measuring 6.32 acres, Sy.No.136A measuring 5.92 acres of Haddinagundu village, Ballari stood in the name of grandfather of defendant no.11 to 14

i.e., Chakli Shivappa in property register and encumbrance certificate from 1948 and in revenue record from 1975-82 and said Shivappa bequeathed Sy.No.95/D measuring 4.20 acres, Sy.No.94/C measuring 4.46 acres and Sy.No.138/A measuring 5.92 acres of Haddinagundu Ballari to his wife Venkatamma in terms of registered gift deed bearing Document No. 2527 Vol. 507 dated 18.08.1948 and office of Sub-Registrar, Ballari and subsequently said Shivappa sold Sy.No.104 measuring 3.17 acres to one Nagamma and after her demise, said property devolved upon legal heirs of Nagamma by name Pakirrappa, Venkateshulu and Lakshmanna. The plaintiff no.1 & 2 and defendant no.1 & 2 are children of Pakirrappa and defendant no.3 is wife of Venkateshulu and defendant no.5 to 10 are sons and daughters of Lakshmanna.

5. The remaining property in Sy.No.104 measuring 3.17 acres has fallen to the legal heirs of Shivappa i.e., defendant no.11 to 14 and Shivappa had only one son i.e., Ramudu and after his death the said land has devolved upon the legal heirs i.e., defendant no.11 to 14. However, Sy.No.95/D measuring 4.20 acres, Sy.No.94/C measuring 4.46 acres of Haddingundu Ballari stood in the name of

Chakli Shivappa in revenue records from 1975-82 and subsequent to death of Shivappa, said property was transferred to his son Venkatramana in revenue record but, the plaintiffs by resorting to the tactics of manipulation obliterated his name in the revenue records and got inserted the name of their grandfather Rangappa in RORs and thereby, the plaintiffs are precluded from staking their share in the suit schedule properties. After the demise of Venkataramana on 03.02.2015 item no.2 of suit property i.e., Sy.No.104 measuring 3.17 acres of Haddinagundi has been mutated in the name of defendant no.11 to 14 as his legal heirs as per Order in MRT No.120/2023-24 dated 20.03.2024 passed by Tahasildar, Ballari.

6. The defendants having instituted O.S No.281 of 2024 on the file of 5th Addl. Civil Judge and JMFC, Ballari in relation to Sy.No.104 measuring 3.17 acres against the plaintiff and defendant no.1 to 10 and same came to be allowed in favour of defendant no.11 to 14 and plaintiffs preferred MA No.17/2024 against said Order and same was dismissed on merits. The defendants are shown as possessors of item no.2 of the suit property and plaintiffs are

nowhere connected with the suit schedule properties and the plaintiffs are trespassing in the suit schedule properties with an intention to oust the defendants and hence, pray the Court to dismiss said I.A of plaintiff.

7. Heard both the counsels and perused the materials on record.

8. On perusal of materials on record, following points arise for my consideration :

POINTS

1. *Whether the plaintiffs have made out prima facie case ?*
2. *Whether the plaintiffs further show that the balance of convenience lies in their favour ?*
3. *Whether the plaintiffs further show that irreparable injury will be caused to them if said IA is not allowed ?*
4. *What order ?*

9. On perusal of materials on record and after hearing the arguments canvassed by both the counsels, my findings for the above points are hereunder:-

Point No.1 : *In the Affirmative*
Point No.2 : *In the Affirmative*

Point No.3 : In the Affirmative

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

REASONS

10. Point No.1 to 3 :- As these points are interlinked with each other they are taken together for common consideration.

Plaintiffs state that, the suit schedule properties are the ancestral properties acquired by Rangappa and he had three sons i.e., Phakirrappa who died around 2022, 2nd son Venkateshulu who expired around 2018 and last son Lakshmanna who expired around 2015. Phakirrappa died leaving behind plaintiffs and defendant no.1 & 2, Venkateshulu died leaving behind 3rd defendant and Lakshmanna died leaving behind defendant no.5 to 10. The defendant no.11 to 14 are legal heirs of late Ramudu who claims to be legal heirs of Shivanna and Shivanna and Rangappa are brothers. The suit schedule properties are ancestral properties and grandfather of plaintiffs by name Rangappa was in peaceful possession and enjoyment of suit schedule properties. After the death of Rangappa, late Phakirrappa, late Venkateshulu and late Lakshmanna enjoyed the suit schedule properties and after their death, plaintiffs and defendant no.1 to 10 are in possession of suit

schedule property. Bonafide enquiry confirms that, there was partition and division amongst brothers of Rangappa and respective parties took respective shares and infact brother of Rangappa sold his share and so far as Rangappa is concerned he retained the property. The plaintiffs and defendant no.1 to 4 are members of joint family and they have undivided share.

11. In order to substantiate the same, plaintiffs have produced Sale Document No. 797/1949 and its translation copy of Sy.No.104 measuring 6.32 acres i.e., suit schedule item no.2 property reflecting sale to Rangappa s/o. Pakirrappa by Shivappa Agsar. Encumbrance certificate of the year 2024-25 of Sy.No.104 measuring 6.32 acres i.e., item no.2 of suit schedule property, wherein name of transferor is reflected as Pakirrappa along with Shivappa and Rangappa. RTC of Sy.No.104 measuring 6.32 acres of 1375 reflecting the name of Rangappa, RTC of Sy.No.104 measuring 6.32 acres, wherein the name of Rangappa and Shivappa are shown to be deleted and name of Venkataramana name being entered. RTC of Sy.No.104 measuring 6.32 acres reflects the name of Venkataramana guardian Chakla Rangappa,

RTC of Sy.No.104 measuring 6.32 acres of the year 1996 to 2002 reflects the name of Venkataramana guardian Chakla Rangappa and Pakirrappa, Lakshmanna and Venkateshulu, RTC of Sy.No.104 measuring 6.32 acres of the year 1986-91 reflects the name of Venkatarama guardian Chakla Rangappa and names of Pakirrappa, Lakshmanna and Venkateshulu, RTC of Sy.No.104 measuring 6.32 acres of the year 19910-96 reflects the name of Venkataramana guardian Rangappa and also Pakirrappa, Lakshman and Venkateshulu, RTC of Sy.No.104 measuring 6.32 acres of the year 2001-02 reflects the name of Venkataraman guardian Chakla Rangappa and names of Pakirrappa, Lakshmanna and Venkateshulu jointly, RTC of Sy.No.104 measuring 6.32 acres of the year 2002-2019 reflects the name of Venkataraman guardian Chakla Rangappa and names of Pakirrappa, Lakshmanna and Venkateshulu and RTC of Sy.No.104 measuring 3.16 acres reflects the name of Pakirrappa and Lakshmanna jointly with Jayamma w/o. Vekateshulu.

12. Further Plaintiffs have produced tax paid receipt. Further plaintiffs have produced RTC of Sy.No.94C/1 measuring 4.40 of

Hindinagundi village i.e., item no.1(1) suit property reflecting the name of Lakshmanna, Pakirrappa and Venkateshulu jointly and said RTC is of the year 2023-24, RTC of Sy.No.95/D/1 measuring 4 acres of the year 2023-24 reflects the name of Pakirrappa jointly with Lakshmanna and Jayamma w/o. Venkateshulu. The said RTCs produced of suit schedule properties reflect the name of Rangappa and his son i.e., Pakirappa, Venkateshulu and Lakshmanna who are ancestors of plaintiffs and defendant no.1 to 10 and said Pakirrappa is father of plaintiffs.

13. Whereas Defendant no.14 in the written statement contends that, defendant no.11 to 14 are legal heirs of late Ramudu @ Venkatrama i.e., sons of Ramudu @ Venkatraman and grandson and daughter of Shivanna and denied plaint averments and contends that, the defendant no.11 to 14 are title holders and possessors of suit schedule properties and defendant no.11 to 14 have unwavering stake in item no.2 in Sy.No.104 measuring 3.17 acres of suit schedule property. The Tahasildar has mutated said property in the name of defendants as procedure mandated in KLR Act 1964. The landed properties Sy.No.95/D measuring 4.20 acres,

Sy.No.94/C measuring 4.46 acres, Sy.No.104 measuring 6.32 acres, Sy.No.136 measuring 5.92 acres situated at Haddinagundi village, Ballari stood in the name of grandfather of defendant no.11 to 14 i.e., Chakali Shivappa in property register and in encumbrance certificate from 1948 and in revenue records from 1975 to 1982 and said Shivappa bequeathed landed properties bearing Sy.No.95/D measuring 4.20 acres, Sy.No.94/C measuring 4.46 acres, Sy.No.138/A measuring 5.92 acres to his wife Venkatamma in terms of registered gift deed bearing Document No.2527 Vol 507 dated 18.08.1948 and subsequently Shivappa sold Sy.No.104 measuring 3.17 acres to one Nagamma and after her demise, it has devolved upon the legal heirs of Nagamma i.e, Pakirappa, Venkateshulu and Lakshmanna. The remaining landed property bearing Sy.No.104 measuring 3.17 acres has fallen to legal heirs of Shivappa i.e., defendant no.11 to 14 and said Shivappa had only one son by name Venkataramana @ Ramudu and in wake of death of Venkataramana @ Ramudu, land bearing Sy.No.104 measuring 3.17 acres has devolved upon his legal heirs i.e., defendant no.11 to 14.

14. In the written statement, defendant no.14 himself contends that, after the death of Nagamma Sy.No.104 measuring 3.17 acres has devolved upon legal heirs of Nagamma i.e., Pakirappa, Venkateshulu and Lakshmanna and defendant no.14 further states that, plaintiff no.1, 2 and defendant no.1 and 2 are sons and daughters of said Pakirappa and said version of defendant no.14 itself shows that, the defendants have not claimed to have absolute right over Sy.No.104. Further though Sy.No.95/D measuring 4.20 acres, Sy.No.94C measuring 4.46 acres, Sy.No.104 measuring 6.32 acres, Sy.No.136 measuring 5.92 acres situated at Haddianagundi village Ballari is said to be stood in the name of Chakali Shivappa grandfather of defendant no.11 to 14 and defendants have filed document no 1 Encumbrance certificate reflecting the name of Shivappa for Sy.No.94/C measuring 4.46 acres, Sy.No.95/D measuring 4.20 acres, Sy.No.138/A measuring 3.92 acres, in Document No.2 Particulars of ownership reflects the name of Shivappa for Sy.No.94/C measuring 4.46 acres, Sy.No.95/D measuring 4.20 acres and Sy.No.133/A measuring 5.92 acres , in Sale Document No. 776/1938 reflects sale to Satrasal Bandeppa

son Veeranna by Shivappa and Rangappa of Sy.No.94/C measuring 4.46 acres, Sy.No.95/D measuring 4.20 acres, and Sy.No.104 measuring 6.32 acres and said documents are pertaining to Sy.No.94/C measuring 4.46 acres and Sy.No.95/D measuring 4.20 acres and not pertaining to suit properties which are Sy.No.94/C/1 measuring 4.40 acres and Sy.No.95/D/1 measuring 4 acres and though said sale is of Sy.No.104 measuring 6.32 acres, defendant no.14 has filed Sale Document No. 797/1949 reflecting sale to Rangappa and his wife Nagamma by Shivappa of Sy.No.104 measuring 6.32 acres which is item no.2 of suit schedule property.

15. Further RTC of Sy.No.94/C/1 measuring 4.40 acres (item no.1(1) property) of the year 1996-2002 reflects the name of Venkateshulu, Lakshmanna and Pakirrappa, RTC of Sy.No.94/C/1 measuring 4.40 acres of the year 2024-25 reflects the name of Venkateshulu, Lakshmanna and Pakirrappa, RTC of Sy.No.95/D/1 measuring 4.00 acres of the year 1996-97 to 2001 (item no.1(2) suit property) reflects the name of Pakirrappa, Venkateshulu and Lakshmanna. Further mutation extract No.25/1983-84 reflects the name of Pakirrappa, Lakshmanna and

Venkateshulu for Sy.No.94/C/1 measuring 4.40 acres, Sy.No.95/D/1 measuring 4 acres and Sy.No.104 paiki 3.16 acres on death of Chakla Rangappa. Document No. 2527/1948 produced is of Sy.No.138 paiki measuring 3 acres which is not a suit property.

16. Further I.A No.II filed in O.S No.281 of 2024 is with respect to Sy.No.104/2 measuring 3.16 acres and not present suit survey number and the documents produced by defendants themselves particularly RTCs reflect the name of Pakirrappa along with his brothers for suit properties and it is not disputed that, plaintiffs are sons of Pakirrappa. Though defendant no.14 in the written statement states that, plaintiffs have by resorting to tactics of manipulation obliterated his name in revenue records and got inserted the name of their grandfather Rangappa in RORs, the said facts needs to be proved by them which requires full fledged trial. Further though defendant no.14 further states that, after demise of Venkataramana on 03.02.2015 name of defendant no.11 to 14 is mutated for Sy.No.104 measuring 3.17 acres of Haddinagundi village as legal heirs as per Order MRT No.120/2023-24 passed by

Tahasildar it can be seen that, the suit property item no.2 in present case is Sy.No.104 measuring 6.32 acres and defendants states only 3.17 acres to be mutated in their name and in earlier part of written statement they have stated that, Shivappa sold Sy.No.104 measuring 3.17 acres to one Nagamma and after his death it has devolved upon Pakirrappa (plaintiffs' father) Venkateshulu and Lakshmananna which means defendant no.11 to 14 are not claiming to be in exclusive ownership of entire Sy.No.104 measuring 6.32 acres and asserts part to be sold to Nagamma and hence, from the above discussion plaintiffs have made out prima facie case and further as suit is for partition, to keep suit properties intact till the determination of rights of parties it is necessary to restrain the alienation of suit properties and further to avoid multiplicity of proceedings and creation of third party rights said IA needs to be allowed. Hence considering the discussion made above, **Point No.1 to 3 are answered in Affirmative.**

17. Point No.4 :- In view of the discussion made above, I proceed to pass the following :

ORDER

I.A. No.II filed under Order 39 Rule 1 & 2 R/w Section 151 of Civil Procedure Code is hereby allowed on cost of Rs.200/-.

The defendants, their henchmen, servants, agents, and any person claiming through defendants are hereby temporarily restrained from alienating the suit schedule properties till the disposal of the suit.

(Dictated to the Stenographer, directly on computer and corrected by me and then pronounced in the open Court on this 27th day of March, 2025).

(Nasrat Mukhtar Ahmed Khan)

II Addl. Senior Civil Judge, Ballari.