

IN THE COURT OF THE CIVIL JUDGE & JMFC, SANDUR

:: PRESENT ::

Sri. Md. Shaiz Chouthai,

B.A.,LL.B.(Hons.), LL.M,(M.L.)

Civil Judge & JMFC, Sandur.

Dated: 10th day of November 2025

O.S. No.211/2022

Plaintiff/s : Killari Bhupathi S/o Late Killari Chittappa
and Another.

(By Sri. H.A., Advocate)

V/S

Defendant/s : Smt. Killari Gouramma,
W/o Late Killari Chittappa
and Another.

(D-1 By Sri. P.B.S. Advocate)

(D-2 By Sri. G.M. Advocate)

I.A.No.I

Applicant/s : Killari Bhupathi S/o Late Killari Chittappa
and Another.
(Plaintiffs)

V/S

Opponent/s : Smt. Killari Gouramma,

W/o Late Killari Chittappa
and Another.
(Defendants)

ORDER ON I.A.No.I FILED UNDER ORDER 39

RULE 1 AND 2 R/w SECTION 151 OF C.P.C.

This is an application filed by the plaintiffs against the defendant No.1 with a prayer to restrain him and any other person claiming under him from selling, alienating or transferring the suit property till the disposal of the suit.

2. The plaintiff No.1 and 2 are the children of defendant No.1 and Late Kilari Chittappa. According to plaintiffs, the suit property bearing land Sy. No. 355, measuring 5.40 acres, situated at Hirekeriyaginhalli village, is the ancestral and joint family property of the plaintiffs and defendant No.1. The property was earlier standing in the name of Kilari Chittappa. The plaintiffs and defendant No.1 constitute Hindu joint family, and the plaintiffs and defendant No.1 are in joint possession and enjoyment of the suit property. There is no partition of the suit property between the plaintiffs and defendant No.1.

3. It is alleged that on the strength of the entries made in the revenue records in the name of her husband, the defendant No.1 trying to alienate the suit property. The plaintiffs requested and demanded the defendant No.1 to allot the share in the suit property on 26.09.2022. The defendant No.1 postponed the said request, and again on 15.10.2022, the plaintiffs demanded to allot their share in the suit property but the defendant No.1 denied the said request. Now, the defendant No.1 is trying to alienate the suit property. It is stated that the applicant has established his *prima-facie* case and produced all relevant records which shows that the balance of convenience lean in his favour. If the injunction is not granted irreparable injury would be caused to the plaintiffs. Amongst other grounds he prayed to the application.

4. After service of summons in the case, the defendant No.1 appeared but failed to file written statement. During the pendency of the suit, the defendant No.2 made an application for his impleadment under Order 1 Rule 10 of CPC which came to be

allowed. The defendant No.2 is taken on record, and he has filed written statement. He filed memo adopting the written statement as also objections to I.A. No.I.

5. According to defendant No.2, the suit filed by the plaintiffs is collusive with defendant No.1 who is none other than the mother of the plaintiffs. It is stated by defendant No.2 that he has purchased the suit property from the children of Late Killari Thippaga i.e., Mallappa, Dodda Chittappa, Ramappa, Nagappa, Sanna Chittappa and Rajappa, through Registered Sale Deed Dt. 03.03.1983 for consideration amount of Rs.3,000/-. The defendant No.2 was put in possession of the suit property, and the transaction of sale is reflected in the encumbrance certificate. The name of defendant No.2 is shown in the cultivation column of ROR for the year 1983-84 to 1986-87 and later mutation was effected vide MR No.46/1994-95 Dt. 17.07.1995. Thereafter, the name of defendant No.2 disappeared from the ROR by the mistake committed by the revenue officers. The plaintiff No.1 and 2 and the defendant No.1 does not get any right over the suit

property. The facts of alienation of suit property in favour of defendant No.2 is within the knowledge of plaintiffs and defendant No.1, who are never in possession of the suit property. The suit property is not available for the plaintiffs and defendant No.1 for partition.

6. According to defendant No.2, the illegal entry in the name of plaintiffs father was challenged before the Assistant Commissioner, Ballari in ROR Appeal No.11/2019. The said authority passed order directing the parties to approach civil court for the relief. Thereafter, defendant No.2 instituted suit against the plaintiffs and defendant No.1 *herein* before the court of Hon'ble Senior Civil Judge, Kudligi sitting at Sandur in OS No.8/2023 for the relief of declaration of ownership, permanent injunction and for rectification of revenue records. The suit is pending for consideration. The plaintiffs and defendant No.1 are neither in possession nor have any right in the suit property. The plaintiffs have no cause of action to institute the suit and seek the

relief of temporary injunction. Amongst other grounds, the defendant No.2 prays to dismiss the application.

7. I have heard the learned counsel for the plaintiffs and defendant No.2. Perused the records.

8. The points that arise for my consideration are:-

1. Whether the applicant proves that he has *prima-facie* case in her favour?
2. Whether the applicant proves balance of convenience in his favour?
3. Whether the applicant proves that irreparable loss would be caused to him if injunction is not granted?
4. What order?

9. My answer on the above points are as follows:-

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

10. **POINT NO.1 TO 3:-** This is a suit for the relief of partition and separate possession in respect of the suit property by the plaintiffs against their mother defendant No.1. It is germane to notice that the present application is filed along with the main suit seeking temporary injunction against defendant No.1 restraining her from alienating the suit property. The defendant No.2 is impleaded later in the suit. Technically, the relief sought in I.A. No.1 is not against the defendant No.2. However, it has to be seen whether the plaintiffs have made *prima-facie* case to grant such relief either against the defendant No.1 or defendant No.2.

11. The defendant No.2 claimed to be the owner and in possession of the suit property on the strength of the Registered Sale Deed Dt. 03.03.1983. On perusal of the records furnished by the plaintiffs and defendant No.2, it unveils that the name of defendant No.2 appeared in the ROR for the year 1983-84 to 1986-87 and till 1997, on the strength of the Registered Sale Deed Dt. 03.03.1983. The transaction of sale is also reflected in

the encumbrance certificate. The mutation appears to be valid and legal. The ROR for the later year appear in the name of Late Killari Thippaga and thereafter, in the name of plaintiffs father Late Killari Chittappa. Apparently, the mutation in the name of Killari Thippaga and Killari Chittappa is not legally substituted entry. There are no records to show on what strength the name of Killari Thippaga and Killari Chittappa are entered in the ROR after the name of defendant No.2. The mutation in the name of Killari Chittappa is challenged before the Assistant Commissioner, Ballari in ROR Appeal No.11/2019 who directed the defendant No.2 to approach civil court. As such, the defendant No.2 instituted suit against the plaintiffs and defendant No.1 *herein* before the court of Hon'ble Senior Civil Judge, Kudligi sitting at Sandur in OS No.8/2023 for declaration of ownership, injunction and rectification of entry. The defendant No.2 *herein* has obtained injunction against the plaintiffs and defendant No.1 *herein* and they are restrained from alienating the suit property. This fact was not brought before the court by the plaintiffs during the hearing.

Since there is already an injunction operating against the plaintiffs and defendant No.1 *herein* which restrained them from alienating the suit property, there is no question of granting same relief to the plaintiffs *herein*. The plaintiffs have suppressed material fact that the name of defendant No.2 had appeared in the ROR and in the encumbrance certificate for the obvious reason of taking order of injunction against him. The plaintiffs have not approached the court with clean hand. As such, they are not entitled for the discretionary relief of temporary injunction. The plaintiffs have not made any prima-facie case in their favour. If the injunction is granted hardship will be caused to defendant No.2. The balance of convenience tilt in favour of defendant No.2. Hence, this Court answers Point No.1 to 3 in the **Negative**.

12. **POINT NO.4:-** In view of the above findings and discussions, I proceed to pass the following:-

ORDER

I.A. No.I filed by the applicant U/O.39

Rule 1 and 2 R/w Sec. 151 of C.P.C., is hereby dismissed.

The observations made in this order shall not come in the way of, affect or cause prejudice to the rights of the parties to prove their case by leading evidence during the trial.

(Dictated to the stenographer, computerized by him, corrected by me and then pronounced in the open Court, on this the 10th day of November 2025)

(Md. Shaiz Chouthai)
Civil Judge and J.M.F.C., Sandur.