

IN THE COURT OF ADDL. SENIOR CIVIL JUDGE & JMFC**AT :MUDHOL****BEFORE: Sri.Umesh S. Atnure,****B.Com.LL.B.(Spl)****Addl. Senior Civil Judge & JMFC Mudhol****O.S. No.50/2020****DATED THIS 06th DAY OF OCTOBER - 2020**

1. Sri. Sangappa S/o Mallappa B. Patil,
Age: 47 years, Occ: Agriculture,
R/o Soragav, Tq: Mudhol, Dist: Bagalkot and Others

.....Plaintiffs**-Versus -**

1. Sri. Balappa S/o Venkappa B. Patil,
Age: 63 years, Occ: Agriculture,
R/o Soragav, Tq: Mudhol, Dist: Bagalkot & Others.

....Defendants**:- I.A.No.I :-**

1. Sri.Sangappa S/o Mallappa B. Patil,
Age: 47 years, Occ: Agriculture,
R/o Soragav, Tq: Mudhol, Dist: Bagalkot.
2. Smt.Bharati W/o Ashok Lingaraddi,
Age: 42 years, Occ: Household work,
R/o Satti, Tq: Athani, Dist: Belagavi.
3. Sri.Krishna S/o Mallappa B. Patil,
Age: 41 years, Occ: Agriculture,
R/o Soragav, Tq: Mudhol, Dist: Bagalkot.
4. Smt.Sudha W/o Ramesh Batakurki,
Age: 39 years, Occ: Household work,
R/o Sutagundi, Tq & Dist: Vijayapur.

..... Applicants/Plaintiffs**-Versus-**

1. Sri.Balappa S/o Venkappa B. Patil,
Age: 63 years, Occ: Agriculture,
R/o Soragav, Tq: Mudhol, Dist: Bagalkot and Others.

..... **Opponents/Defendants**

Plaintiff/s by Sri.I.H.A., Advocate
Defendant Nos.1 by Sri.M.M.T., Advocate,
Defendant Nos.2 Absent
Defendant Nos.3 by Sri.S.I.H., Advocate

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: ORDER ON I.A.No.I filed U/o 39 Rule 1 and 2 r/w Section 151 of CPC

1. The plaintiffs are filed this present application U/o 39 rule 1 and 2 r/w section 151 of CPC praying for grant of temporary injunction order against the defendant No.1 from alienating or transferring the suit land bearing R.S.No.144/2 totally measuring 14 acres 10 guntas out of it western side 12 acres 10 guntas till disposal of this suit.
2. In the accompanying affidavit the plaintiff No.1 contended that, originally the suit land was owned and possessed by Tammanna S/o Bhimarayappa B. Patil. He died on 17-04-1951 and the said Tammanna is succeeded by three sons namely 1) Ramachandrappa, 2) Hanamant and 3) Mallappa. Mallappa died on 10-10-2000 and his wife died on 23-10-2010. After their death plaintiffs No.1 to 4 and defendants No.2 and 3 being the heirs of Mallappa and Chandrawwa they succeeded the property owned by Mallappa. After the death of propositus Tammanna his two surviving sons namely Hanamant and Mallappa succeeded the properties owned by the Tammanna and accordingly M.E.No.355 was certified on 20-03-1961.

During the life time Hanamant and father of plaintiffs by name Mallappa both of them jointly sold 04 acres of land in R.S.No.144/2 totally measuring 16 acres 10 guntas to one Pralhad Ningappa Gurav, accordingly the M.E.No.426 was certified on 15-06-1962. Their father was illiterate and not active as such Smt.Chinnawwa was managing the joint family affairs and said Chinnawwa used to lease out the suit land, she was telling that she leased the suit land to defendant No.1 for 12 years from 01-01-2008 to 01-01-2020, they believed the words of Chinnawwa and accordingly on 01-01-2020 they approached the defendant No.1 and requested him to handover the possession of the suit land them as lease period is expired. At that time the defendant No.1 expressed that Chinnawwa sold suit land to him and refused to hand over the possession of the suit land. Thereafter they verified the revenue records and came to know that Chinnawwa played fraud on them and get deleted the name of their father from record of rights as per M.E.No.1392 on 12-08-1982 without knowledge of their father as such the said mutation is sham, bogus and illegal and the deletion of name of their father was not known to their father during his life time and even after his death they are also not knowing the said fact. The Chinnawwa by taking undue advantage of her name appearing in the record of rights sold the suit land bearing R.S.No.144/2 measuring 12 acres 10 guntas to defendant No.1 under registered sale deed and accordingly M.E.No.1402 was duly certified and the said sale deed dated 02-12-1982

took place without their knowledge and same is not binding on them. As their father was having 1/2 share in the said property and till 1992 the name of Chinnawwa and their father Mallappa continued in the record of rights of the suit land as their father Mallapa and his brother Hanamant were having 1/2 share each in the suit land and after the death of their father they are entitled for 1/2 share in the suit property as such they approached the defendant No.1 along with the elders and requested him to effect partition and allot their 1/2 share in the suit property, but defendant No.1 was refused to effect the partition. Now on the strength of his name appearing in the record of rights of the suit land the defendant No.1 started to make negotiations with strangers in order to alienate the suit property as they have got strong prima facie case and balance of convenience lies in their favour, if the temporary injunction as prayed is not granted then they will be put to great loss and injury. Hence, prayed to allow the application.

- 3.** The defendant No.1 filed objections to this application contending that plaintiffs are not having any prima facie case and balance of convenience does not lies in favour of plaintiffs, if temporary injunction is granted they will not suffers any irreparable loss or injury. Further they contended that the contentions which are taken by them in the written statement may be treated as objections to this application.
- 4.** In the written statement the defendant No.1 contended that after the

death of propositus Tammanna his three sons namely 1) Ramachandrappa, 2) Hanamant and 3) Mallappa succeeded to the property bearing R.S.No.144/2 measuring 16 acres 10 guntas and out of the 3 sons Ramachandra died as a bachelor to that effect waradhi was submitted and names of Hanamant and Mallappa came to be entered in the suit land bearing R.S.No.144/1 as per M.E.No.355 dated 20-03-1961. Further they contended that the sons of Tammanna did not only inherited R.S.No.144/1 apart from that they inherited other numbers of properties. After the death of their father Hanamant and Mallappa could not able to continue in the joint family as such they effected partition under registered partition deed dated 04-06-1976. Under the said partition R.S.No.144 was allotted to the share of Hanamant and R.S.No.130/1, 6/2, 8/2, 8/3 and 9/3 was allotted to share of Mallappa. Since then Hanamant and Mallappa are enjoying their separate shares. Even though the partition was effected by registered partition deed no separate entries were carried out in the revenue records till 1982. After the death of Hanamant his wife Chinnawwa succeeded the property bearing R.S.No.144 as the said property was allotted to the share of Hanamant. Thereafter she filed waradhi got deleted the name of Mallappa on the basis of partition deed dated 04-06-1976 and accordingly M.E.No.1392 was certified on 12-08-1982. The plaintiffs and defendants No.2 and 3 were well aware of these facts but they deliberately suppressing these facts have filed this suit just

to cause wrongful loss to him. Further he contended that the father of plaintiffs and defendants No.2 and 3 by name Mallappa has filed the suit in O.S.No.144/1982 against him and Chinnawwa in that suit Mallappa himself contended that in the year 1976 partition had been effected, in that partition R.S.No.144/2 measuring 16 acres 31 guntas was allotted to the share of Hanamant and plaintiffs and defendants No.2 and 3 well aware of earlier partition and the proceedings in the said suit even though they suppressed of these facts and filed this false suit as such the plaintiffs are not having any prima facie case and balance of convenience does not lies in favour of plaintiffs. If temporary injunction is granted he will be put to irreparable loss and injury. Hence, he prayed to dismiss the application.

5. Heard the arguments of learned counsel for plaintiffs. The learned counsel for the defendant No.1 filed written arguments, I have perused the same.
6. The following points that arise for my consideration, they are as follows;

POINTS

1. Whether plaintiff made prima facie case?
 2. In whose favour balance of convenience lies?
 3. Who will be put to irreparable loss or injury if temporary injunction is granted?
 4. What Order?
7. My findings to the above referred points are as under;

Point No.1	:-	In the Negative
Point No.2	:-	In favour of defendant No.1
Point No.3	:-	In favour of defendant No.1
Point No.4	:-	As per final order

for the following.....

:REASONS:

- 8. POINT No.1:-** It is the specific case of the plaintiff that, themselves and defendants No.2 and 3 are having 1/2 share in the suit schedule properties and Chinnawwa committed fraud on their father and got mutated her name in the revenue records of the suit property and without the knowledge and consent of their father and she alienated the suit property to defendant No.1 without knowledge and consent of their father and even after the death of their father they are also not knowing the fact of alienation of the suit property to defendant No.1. As the deceased Chinnawwa was committed fraud on them and their father, as the suit property is joint family property and in the suit property their father and husband of Chinnawwa by name Hanamant are having equal rights and the alienation made by Chinnawwa is not binding on them.
- 9.** On the other hand the defendant No.1 contended that after the death of propositus Tammanna his three sons succeeded to the properties owned by Tammanna out of the three sons one Ramachandra died unmarried and after his death the Hanamant and Mallappa succeeded to the properties owned by Tammanna B. Patil and accordingly M.E.No.355 was certified on 20-03-1961. Thereafter in between Hanamant and Mallappa partition was took place under registered partition deed dated 04-06-1976 and under the said partition R.S.No.144 was fallen to the share of Hanamant and R.S.No.130/1, 6/2, 8/2, 8/3 and 9/3 are fallen to the share of Mallappa.

Since from the date of partition Hanamant and Mallappa are enjoying their shares separately, but till 1982 separate entries were not carried out in the revenue records and after the death of Hanamant his wife Chinnawwa submitted waradi and got deleted the name of Mallappa on the basis of partition effected on 04-06-1976 and accordingly M.E.No.1392 was certified on 12-08-1982. Further they contended that the father of plaintiffs and defendants No.2 and 3 himself filed suit against him and Chinnawwa in O.S.No.144/1982 in that suit he contended that in the year 1976 partition was effected and R.S.No.144/2 measuring 16 acres 31 guntas was allotted to the share of Hanamant. All these facts are well within the knowledge of the plaintiff, but by suppressing all these material facts the plaintiffs are filed this false suit.

- 10.** When the plaintiffs approached the court seeking discretionary relief of temporary injunction then burden is on the plaintiffs to make out prima facie case to show that in the suit property their father Mallappa is having 1/2 share and after his death they are entitled to get 1/2 share of their father in the suit property. In support of the case of the plaintiff, the plaintiff produced RTC extract of the suit land for the year 2019-20, M.E.No.355, M.E.No.1392, M.E.No.426, M.E.No.1402. By perusing the M.E.No.355 it appears that the after the death of Tamanna the sons Tammanna were acquired the properties bearing R.S.No.6/2, 8/2, 8/3, 9/3 and 130/1 and suit property bearing R.S.No. 144/1 and out of three sons of

Tammanna first son Ramachandra died unmarried and after his death the said properties were succeeded by Hanamant and Mallappa. These facts is also admitted by the defendant. Further by perusing the M.E.No.1392 dated 12-08-1982 it clearly goes to shows that in between Hanamant and Mallappa i.e., father of plaintiffs and defendants No.2 and 3 partition was effected and based on that partition after the death of Hanamant M.E.No.1392 was certified on 12-08-1982. These documents prima facie shows that partition was effected in between Hanamant and Mallappa.

11. The defendant No.1 specifically contended that in between Hanamant and Mallappa registered partition was effected on 04-06-1976 and in that partition R.S.No.144 was fallen to the share of Hanamant and R.S.No.130/1, 6/2, 8/2, 8/3 and 9/3 were fallen to the share of Mallappa. In support of this contentions the defendant No.1 produced the certified copy of partition deed dated 04-06-1976. By perusing the the same it is clear that in between Hanamant and Mallappa partition was effected under registered partition deed dated 04-06-1976. Further the defendants contended that the father of plaintiffs and defendants No.2 and 3 himself filed a suit against present defendant No.1 and Chinnawwa in O.S.No.144/1982 and in that suit the father of plaintiffs clearly contended that partition was effected in between him and his brother Hanamant on 04-06-1976. In support of this contention the defendant No.1 produced the certified copy of judgment and decree in O.S.No.144/1982 wherein by

perusing the same it is clear that the father of plaintiffs and defendants No.2 and 3 was admitted the fact of partition effected on 04-06-1976 and in that partition R.S.No.144/2 was fallen to the share of Hanamant and other properties are fallen to his share. These documents which are produced by the defendant No.1 clearly goes to show that on 04-06-1976 partition was effected in between Hanamant and Mallappa and the fact of effecting the partition was clearly admitted by the father of plaintiffs and defendants No.2 and 3 in O.S.No.144/1982.

- 12.** The plaintiffs contended that after the death of Hanamant his wife Chinnawwa without the knowledge of their father get certified M.E.No.1392 as such the said M.E.No.1392 is not binding on them. This contention of the plaintiff is not acceptable one, because their father himself filed suit against the present defendant No.1 and Chinnawwa on 29-07-1982 and in that suit itself the father of the plaintiffs and defendants No.2 and 3 clearly admitted the fact of effecting the partition between him and his brother Hanamant. Further by perusing the M.E.No.1392 it is clear that prior to certification of the mutation entry notices were issued to the interested parties and no objections were received and accordingly M.E.No.1392 was certified and even after certification of the mutation entry during life time of Mallappa he has never challenged the said mutation entries and as per the say of the plaintiffs Mallappa died on 10-10-2000 and after certification of

M.E.No.1392 Mallappa lived more than 18 years and during his life time he never challenge the said mutation entry. It shows that the father of plaintiffs and defendants No.2 and 3 was very well knowing the fact that as per the partition effected on 04-06-1976 the M.E.No.1392 was certified

13. The plaintiff has not at all whispered anything about the partition effected on 04-06-1976 and they have also not at all stated what happens to the other properties owned by propositus Tammanna Patil. It appears that plaintiffs by suppressing material facts they approached this court contending that their father was having 1/2 share in the suit schedule property. If at all no partition was effected the plaintiffs would have included the other properties held by propositus Tammanna which are shown in M.E.No.355. But the plaintiffs are not included the properties bearing R.S.No.6/2, 8/2, 8/3, 9/3 and 130/1, only the plaintiffs have included the alienated property in this suit. Hence, the contention of the plaintiffs that no partition was effected in between Tammanna and Hanamant is not acceptable at this stage. Further plaintiffs are not put forth any prima facie material to show that the Chinnawwa was committed fraud on their father and the plaintiffs are not stated that the material fact before the court. Under such circumstances I am of the considered view that when the plaintiffs are seeking discretionary relief of temporary injunction then plaintiffs have to approach the court with clean hands without suppressing the material facts. But in this present case on hand it appears that

plaintiffs by suppressing material fact of partition effected in between their father and his brother Hanamant they are falsely claiming that their father was having 1/2 share in the suit schedule property. Hence, I am of the considered view that the plaintiffs failed to make out prima facie case.

Hence, I answered the point No.1 in the Negative.

14. Point No: 2:- The plaintiffs are contending that in the suit property their father is having 1/2 share but Chinnawwa committed fraud on their father and got certified her name to the suit property without the knowledge of their father and she also alienated the suit property to defendant No.1. The suit property is their joint family property and their father is also having 1/2 share in the suit property as such balance of convenience is lies in their favour. But in this case the plaintiffs are failed to make out the prima facie case and the defendant No.1 put forth prima facie material before the court to show that on 04-06-1976 partition was effected in between Hanamant and father of plaintiffs and defendants No.2 and 3 and in that partition suit property was fallen to the share of Hanamant and other properties were fallen to the share of father of plaintiffs and defendants No.2 and 3. Further defendant No.1 put forth sufficient material before the court to show that after the death of Hanamant his wife and Chinnawwa got mutated her name based on the partition dated 04-06-1976 and thereafter she alienated the suit property to defendant No.1 and since from the date of purchase he is the absolute

owner and in possession of the suit property and in support of the contention of the defendant No.1 he has put forth prima facie material before the court. Hence, I am of the considered view that the balance of convenience lies more in favour of defendant No.1 as compared to the plaintiff. **Hence, I answered the point No.2 in favour of defendant No.1.**

15. Point No.3:- The plaintiffs are sought for temporary injunction restraining the defendant No.1 from alienating or transferring the suit property till disposal of the suit contending that in the suit property they are having 1/2 share if the defendant No.1 alienated or transferred the suit property in favour of any third party then they will put to irreparable loss or injury. But this contention of the plaintiffs is not acceptable one, because the plaintiffs are failed to make out prima facie case to show that no partition was effected in between their father and Hanamant and their father was having 1/2 share in the suit schedule property. Further the defendant No.1 put forth acceptable material before court to show that his vendor was the absolute owner of the suit property and she sold the suit property to him in the year 1982 and since 1982 he is in possession and enjoyment of the suit property. To rebut these contentions of the defendant No.1 the plaintiffs are not put fourth any prima facie material. If the defendant No.1 is restrained by an order of temporary injunction then definitely it will cause irreparable loss and injury to the defendant

No.1. Further if the defendant No.1 made transfer or alienation during the pendency of the suit the transferee will not get any valid title, even if any alienation or transfer is made during the pendency of the suit it will not cause any hardship or loss to the plaintiff. Hence, I am of the considered view that if temporary injunction as sought by the plaintiff is not granted then it will not cause any loss or hardship to the plaintiff.

Hence, I answered the point No.3 in favour of defendant No.1.

16. Point No.4:- For the above stated reasons, I proceed to pass the following;

:- O R D E R:-

The application filed by the plaintiffs U/o
39 rule 1 and 2 of CPC at I.A.No.I is hereby
dismissed and exparte temporary injunction
granted in favour of plaintiffs is vacated.

No order as to costs.

(Dictated to the stenographer, transcribed and typed by him, script corrected, signed and then pronounced in the open court by me on this the **06th DAY OF OCTOBER - 2020**).

Sd/-
(Umesh. S Atnure)
Addl. Senior Civil Judge & JMFC
Mudhol

/mmk/