

KABK210006562017



**IN THE COURT OF ADDL. CIVIL JUDGE & J.M.F.C, MUDHOL,  
AT: MUDHOL.**

**PRESENT:**

**SMT. SARASWATI HOTAKAR,**  
B.A., LL.M.,  
**Addl. Civil Judge & JMFC., Mudhol.**

**Dated this the 12<sup>th</sup> day of August – 2024**

**O.S.No.98/2017**

**Plaintiff:**

1. Shri. Nagappa S/o Yallappa Sunagad.

**-V/s-**

**Defendant/s:**

1. Shri. Abbu S/o Babu Pendari @ Panawale  
and others.

**I.A.No.I**

**Applicant/Plaintiff:**

1. Shri. Nagappa S/o Yallappa Sunagad.  
Age: 39 years, Occ: Agriculture,  
R/o: Mugalkhod, Tq: Mudhol.

**-V/s-**

**Opponents/Defendants:**

1. Shri. Abbu S/o Babu Pendari @ Panawale.  
Age: 48 years, Occ: Agriculture,
2. Smt. Sajanabi W/o Abbu Pendari @ Panawale.

Age: 38 years, Occ: Household work,

3. Babu S/o Abbu Pendari @ Panawale.  
Age: 23 years, Occ: Agriculture,  
All are R/o: Shirol, Tal: Mudhol.
4. Smt. Tamma W/o Abdul Pendari  
Since deceased by her LR's
- 4a) Shri. Lalsab S/o Abdulsab Kabadi @ Pendari  
Age: 67 years,
- 4b) Shri. Akbarsab S/o Abdulsab Kabadi @ Pendari  
Age: 62 years,
- 4c) Shri. Ameer S/o Abdulsab Kabadi @ Pendari  
Age: 60 years,
- 4d) Shri. Gulab S/o Abdulsab Kabadi @ Pendari  
Age: 57 years,
- 4e) Shri. Mustap S/o Abdulsab Kabadi @ Pendari  
Age: 50 years,
- 4f) Shri. Ghanasaid S/o Abdulsab Kabadi @ Pendari  
Age: 46 years,  
All are R/o: Mahalingapur K.D Budni, Tal: Mudhol.
- 4g) Smt. Khatunama W/o Husenasab Kengalagutti  
Age: 65 years, R/o: Banahatti,
- 4h) Smt. Mamataz D/o Imamsab Budihal  
Age: 54 years, R/o: Mahalingapur K.D Budni,  
Tal: Mudhol.
- 4i) Smt. Sairabanu W/o Ayub Pendari  
Age: 40 years, R/o: Mahalingapur K.D Budni,  
Tal: Mudhol.

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**Applicant by Sri.L.N.S., Advocate**  
**Opponent Nos 1 to 3 Ex-Parte**  
**Opponent No 4 by Sri. B.P.D., Advocate**  
**Pro Opponents No 4(a) to (I) A.A.M., Advocate**

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**Order on I.A.No.I filed U/o.39 Rules 1 & 2 of CPC**

The applicant/plaintiff has filed this application seeking ad-interim order of injunction against opponents/defendants and their

family members, agents etc, from alienating, selling, transferring & creating encumbrance on the suit land and also causing obstruction to the plaintiffs peaceful possession and enjoyment of suit schedule property till disposal of this suit, in the interest of justice and equity.

**2.** In the affidavit annexed to the application the applicant/ plaintiff contended that, he has filed this suit for seeking declaration and permanent injunction against the defendants. Defendant No 4 by taking undue of advantage of her name appearing in R/R of in respect of suit properties are trying to alienate the property to the 3rd person and also causing obstruction to his peaceful possession and enjoyment of the suit schedule property. If the defendants are not restrained from doing their illegal acts then the plaintiff will suffer irreparable loss. He has strong prima facia case and balance of convenience leans in his favour. Hence, on these grounds prayed for allow the application.

**3.** After service of summons defendants No 1 to 3 remained absent and placed ex-parte, defendant No 4 appeared through her counsel and files her detailed written statement and memo to consider the contents of written statement as objection to I.A.No.I. During the pendency of the suit defendant No 4 reported as dead and as per orders on I.A No 2 to 4, the LR's of defendant No 4 were brought on record as defendants No 4(a) to 4(i). These defendants No 4(a) to (I)

filed memo on 04/10/2021 adopting the W.S filed by deceased defendant No 4. The defendants No 4 (a) to (I) contended that, the suit schedule property bearing R.S.No 563/1A measuring 8A-31G is the ancestral property of defendant No 4 and her sisters and brother and their name joint entered as per the orders in O.S.No 56/1970. As per the partition in said suit the property bearing R.S.No 563/1E measuring 2A-00G fallen to the share of deceased defendant No 4 on 05/05/1985 and Dairy No 6771 effected, as per the said partition the defendant No 4 succeeded her name in the R/R of the suit land and thereafter the legal heirs of defendant No 4 are in possession and enjoyment of the said land. The husband of the defendant No 4 by name Abdulsab S/o Lalsab Pendari @ Kabadi died on 10/06/2009 at Mahalingapur and the defendant No 4 is old aged lady. Thereafter the plaintiff and defendant No 1 colluding with the revenue officials created false death certificates and also the defendant No 1 falsely stating that he is the only legal heir of the deceased Tamma and created false affidavit and submitted wardi to the revenue officials as per M.R.No H 157/2012-13 then after taking false inheritance certificate, the defendants No 1 to 3 colluding with revenue officials had created false document in the name of the plaintiff. The defendant No 4 filed appeal challenging the Dairy M.R.No H 157/2012-13 under RTS/AP No 6/2014-15 and same was allowed and canceled the Dairy

MR.No H 157/2012-13 on 16-04-2015, according, the name of defendant No 4 entered in R/R of suit property.

Further contended that plaintiff colluding with defendant No 1 to dupe the property of age old lady by creating inheritance certificate has falsely created alleged sale deed and changed revenue documents in the name of plaintiff. As per the RTS appeal the Dairy M.R. H 157/2012-13 was canceled. Since 1970 i.e. from the date of compromise decree in O.S.No 56/1970 the deceased defendant No 4 was in possession and enjoyment of suit schedule property and after her, her son and daughters i.e. defendants No 4(a) to (I) are in possession and enjoyment of suit schedule property. The alleged sale deed executed by defendants No 1 to 3 in favour of the plaintiff is not binding upon the LR's of defendant No 4. Further the defendant No 4 has also initiated criminal proceedings for the offences punishable U/Sec. 420, 465, 468, 471 under Mudhol Police Crime No 24/2017 against the plaintiff, defendants No 1 to 3 and against the revenue officials for creating false death certificates of defendant No 4, her husband and getting inheritance certificate. The plaintiff never be in possession and enjoyment of suit property and balance of convenience does not leans in his favour. On these and other grounds prays to dismiss the application.

4. On the above pleadings, following points that arise for my consideration:

**:POINTS:**

1. ***Whether the plaintiff has made out prima-facie case against the defendants?***
  2. ***Whether the plaintiff further proves balance of convenience lies in his favour?***
  3. ***Whether irreparable loss causes to plaintiff, if application is not allowed?***
  4. ***What order?***
5. Heard the arguments of both sides.
6. I have perused the pleadings, application, objections and documents on record.
7. On careful perusal of records, my findings to the above points are;

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

**: R E A S O N S :**

8. **POINTS NO.1 to 3**:-These points are taken up together for consideration in order to avoid repetition of facts. The plaintiff has filed present suit against the defendants seeking to declare that he is the owner of suit schedule property by deleting the name of defendant

No 4 from R/R of suit property and also restraining the defendants No 1 to 4 from causing any sort of obstruction to the peaceful possession and enjoyment of suit schedule property.

The plaintiff has contended that, the defendants No 1 to 3 were the exclusive owners in possession of suit schedule property. On 21/10/2013 the defendants No 1 to 3 raised suit schedule property for sale, at that time the plaintiff verifying the document M.R. No H 157/2012-13 dated 29/06/2013 has purchased the suit schedule property for Rs. 3,96,000/- under a registered sale deed by availing loan and also selling one of his property. The defendant No 4 having no right, title is started to causing obstruction to his peaceful possession and enjoyment by denying the ownership right of plaintiff and also she has filed complaint under Cr.No 24/2017 against the plaintiff and others. These being the facts, the protect his possession and title he has filed this suit.

Per contra, the defendant No 4 contended that, defendants No 1 to 3 are noway concerned to the suit schedule property, plaintiff colluding with defendants No 1 to 3 has created false inheritance certificate by obtaining false death certificates of defendant No 4 and her husband showing that the defendant No 1 is the only legal heir to defendant No 4 and her husband and colluding with revenue officials has falsely obtained inheritance certificates and got created false Dairy by giving Waradi to revenue officials and by getting undue advantage

of their names appearing in revenue records plaintiff and defendant No 1 created false sale deed which is not binding upon defendant No 4.

Present application has filed seeking interim relief of temporary injunction against the defendants restraining them from causing any sort of obstruction to the plaintiff's use and enjoyment of suit schedule property and from alienating the suit schedule property in any manner till disposal of the suit.

**9.** In support of his contention plaintiff has produced documents i.e. R of R extract of R.S.NO. 563/1E of Belagali village standing in the name of defendant No 1 dated 21-03-2017, R of R extract of R.S.NO. 563/1E of Belagali village Copy standing in the name of defendant No 1 dated 23-03-2017, R of R extract of R.S.NO. 563/1E of Belagali village standing in the name of defendant No 4 dated 21-03-2017, M.R.No H 157/2012-13 dated 23-03-2017, M.R.No H 125/2016-17, Purchase deed of the plaintiff, Pawn Broker receipts, Sale deed of the plaintiff and also sale of agreement.

**10.** Per contra, the defendant No 4 has produced documents i.e. affidavti sworn by defendant No 1, farm No 19, Form No 21 Rule 65 notice, encumbrance certificate issued sub registrar Mudhol, death certificate issued by village accountant Mahalingapur by S.I. Sudi, death extract of Tamma Latur, M.R.No H 157/2012-13, R/R of

R.S.No 563/1E 2013-14, FIR Mudhol P.S.No 24/2017, death extract of Abdulsab Kabadi, Death extract of Tamma Pindari @ Kabadi, Heirship certificate issued by Deputy Tahashildar Mudhol, Two paper cutting of Vijaya Karnataka Daily news paper, Order in RTS AP No 06/2014-15 by AC, Jamakhandi, water tax receipts, tax paid receipts, News paper cutting of Vijaya Karnataka and Decree in O.S.No 56/1970.

**11.** At this stage, without going into the merits of the case and holding mini trial, this court has considered the aspect of Prima facie case. At this stage, this court makes it very clear that this court is looking towards prima facie case and not prima facie title. It is well-settled principles of law that at the time of disposing the Temporary Injunction application, the court cannot go into the prima facie title and only to consider whether the Plaintiff has made out a prima facie case for granting interim relief.

**12.** The primary purpose for granting interim relief is the preservation of the things in dispute till legal rights and conflicting claims of the parties before the court are adjudicated. In other words, the object of making an order regarding interim relief is to evolve a workable formula to the extent called for by the demands of the situation, keeping in mind the pros and cons of the matter and striking a delicate balance between two conflicting interests i.e. injury

and prejudice, likely to be caused to the Plaintiff if the relief is refused; and injury and prejudice likely to be caused to the Defendants if the relief is granted. The underlying object of granting temporary injunction is to maintain and preserve status quo at the time of institution of the proceedings and to prevent any change in it until the final determination of the suit. It is in the nature of protective relief granted in favour of a party to prevent future possible injury to other side.

**13.** On careful perusal of documents produced by plaintiff shows at this stage, it shows that the name of defendant No 1 came to be entered in revenue documents of suit property on the basis of Pouti Khata(ಪೌತಿ ಖಾತಾ) i.e. as per M.R.No 157/2012-13. Further on perusal of sale deed, it depicts that the plaintiff has purchased suit property under a registered sale deed dated 22/10/2013 from defendants No 1 to 3. Further, on perusal of the documents produced by defendant No 4 at serial No 14 i.e. order copy in RTS/AP No 6/2014-15 dated 16/04/2015 passed by Assistant Commissioner Jamakhandi, wherein, the AC has canceled M.R.No 157/2012-13, after getting cancellation of M.R.No 157/2012-13 the name of defendant No 4 came to be entered in revenue documents of suit schedule properties. Further, on perusal of documents at serial No 12 i.e. heirship certificate issued by Deputy Tahashildar Mudhol, the defendant No 4

and her husband by name Abdulsab Pendari having 9 children's as their legal heirs. It can be also seen from the document i.e. genealogy of defendant No 4's family produced by plaintiff himself.

Further plaintiff has contended that after verifying the documents in respect of suit schedule property he has purchased suit property under registered sale deed from the defendants No 1 to 3. At this stage, it is important to refer documents at serial No 2 & 3 i.e. form No 19 and form No 21 (Rule 65 Notice) produced by defendant No 4. Wherein at form No 21 obtained by defendant No 1, the plaintiff Nagappa Yallappa Sunagad has signed as witness No 1 and also the documents relied by the plaintiff in support of his contention creates certain doubts. Under such circumstances it cannot be said that the plaintiff has prima facia case and balance of convenience lies in his favour. Further, the documents at serial No 15 & 16 i.e. the water tax receipts and tax paid receipts depicts that the defendant No 4 is in possession suit schedule property at this stage, under such circumstances if the application is allowed it is the defendant No 4 (a) to 4(i) who will be the sufferers. Accordingly, I answer point Nos. 1 to 3 in the Negative.

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

**ORDER**

I.A.No.I filed by the Plaintiff under Order XXXIX Rule 1 and 2 of the CPC is hereby rejected.

(Dictated to the stenographer directly on to the computer typed by her, transcript revised, corrected and then pronounced by me in the open court this the day of **12<sup>th</sup> day of August-2024**)

**(Smt.Saraswati Hotakar)**  
**Addl. Civil Judge & JMFC.,**  
**Mudhol.**