

**IN THE COURT OF SENIOR CIVIL JUDGE, HUNAGUND**

**AT:HUNAGUND**

**Present:**

**Sri. Hanamantarao R.Kulkarni,  
B.Com., LL.B.,  
Senior Civil Judge, Hunagund.**

**O.S. No.19/2022**

**Dated this the 10<sup>th</sup> day of July, 2023**

1. Smt.Shanta w/o Shashidhar Bantanoor and others  
...Plaintiffs

-Versus-

1. Smt.Basamma w/o Channabasappa Gokavi and others  
... Defendants

**I.A. No.II**

1. Smt.Shanta w/o Shashidhar Bantanoor  
...Applicant/  
Plaintiff no.1

-Versus-

1. Iranna s/o Channabasappa Gokavi
2. Smt.Gangavva w/o Iranna Gokavi
3. Smt.Bandavva (died)
4. Virupakshapa s/o Channappa Gokavi
5. Basavaraj s/o Channappa Gokavi
6. Smt.Muktabai w/o Ravindra Bagadarge@ Vagadorge
7. Govindappa s/o Hanamappa Ontigodi  
...Opponents/  
Defendant no.2, 4 to 9

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(By Sri.K.A.H., Advocate for Plaintiffs)

(By Sri.V.B.D., Advocate for defendant no.4 to 8)

(By Sri.M.H.M., Advocate for defendant no.9)

(The defendant no.2- Exparte)

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### **ORDER ON I.A. NO. II**

1. I.A.No.II is filed by the plaintiff under Order 39 Rules 1 and 2 of the Code of Civil Procedure, seeking to restrain the defendant no.2 and 4 to 9 to alienate the suit schedule B properties i.e., item no.1 to 3 and suit schedule house and open site properties i.e., item no.1 to 3 till the disposal of the suit.
2. The defendant no.2 has not appeared before the court. Hence, he was placed exparte. The defendant no. 4 to 8 have filed the written statement and they have filed memo that the contents of the written statement are taken as objections to the I.A.No.II. The defendant no.9 has filed his statement of objections to the said application.
3. I have heard the learned Counsel for the plaintiff and the learned Counsel for the defendant no.4 to 9.
4. On perusal of the records of the case, the following points would emerge for my consideration:
  1. Whether the plaintiff no.1 has made out a prima-facie case?
  2. Whether the balance of convenience tilts in favour of the plaintiff no.1?

3. Whether the plaintiff no.1 would be put to irreparable loss if the temporary injunction is not granted?
4. To what order?
5. My findings on the above points are as under:
  1. In the affirmative.
  2. In the affirmative.
  3. In the affirmative.
  4. As per final order for the following:

### **REASONS**

6. **Point Nos.1 to 3:** I have taken these three points together for my common discussion as they are inter-linked with each other.
7. In an affidavit appended to I.A.No.II, it is stated by the plaintiff no.1 that the suit schedule properties are the ancestral properties. The defendant no.4 to 8 are colluded with each other and created number of illegal mutations pertaining to S.No.317/1 and 317/2 and S.No.213/C of Tulasigeri village and they have converted the same into non agricultural lands and made 256 open sites in the said two lands without the knowledge of her and they are trying to sell the open sites and herself along with other plaintiffs are entitled 4/7<sup>th</sup> share. Further, she has stated that the suit schedule property bearing S.NO.213/C measuring 4 acres situated at Tulasigeri village is the ancestral

property and the deceased Irappa has sold this property to the defendant no.9 without any knowledge and notice to the plaintiffs and the plaintiffs are having share in this property also. Further, she has stated that the suit schedule properties bearing no.479 and 14 and open site bearing no.11 and 11A are also the ancestral properties and the defendants are trying to alienate the said properties. Further, she has stated that she has prima facie case and balance of convenience lies in her favour. Hence, the instant application.

- 8.** The learned Counsel for the defendant no.9 has contended that the defendant no.9 has purchased the landed property bearing NO.213/C measuring 4 acres of Tulasigeri village through a registered sale deed dated 20/11/1997 and he has invested huge amount for the land development and he has converted this land into irrigated land 15 years back. He has also contended that he is the bonafide purchase of the suit property and accordingly among other grounds he has prayed to reject the application.
- 9.** The defendant no.6 has filed the written statement. He has contended that the suit is bad for non joinder of necessary properties and he has contended that the suit schedule properties are not the ancestral properties. He has further contended that there was a partition taken place in the year 1995 between the legal heirs of Channabasappa and Irappa @ Veerappa and Channappa. Further, he has contended that the defendant no.4 has sold the property bearing

S.No.213/1C to the defendant no.9 during his life time on 20/11/1997 and among other grounds he has prayed to reject the application.

**10.** In view of the rival contentions put forth by the both the parties, now, let me see as to whether the plaintiff no.1 has made out a prima facie case in her favour.

**11.** It is pertinent to note that the defendant no. 4 to 8 have taken several contentions. They have contended that the suit properties are not the ancestral properties and there was a partition taken place in the year 1995 and hence, the plaintiffs are not entitled any share in the suit schedule properties. Whether the plaintiffs are entitled their share or not and whether the suit schedule properties are ancestral properties are not are the questions to be decided after the evidence is over and it requires full-fledged trial. Further at this stage it cannot be decided that the plaintiffs are not entitled any share in the suit schedule properties. The defendant no.9 has contended that he is the bonafide purchaser of the suit property bearing S.No.213/1C situated at Tulasigeri village. It is pertinent to note that whether the defendant no.9 is the bonafide purchaser or not requires full fledged trial. At this stage, it cannot be stated that he is the bonafide purchaser of the suit property bearing S.No.213/1C. It is settled position of law that if there are triable issues between the parties it is good case to issue temporary injunction. Further if this I.A. is not allowed much loss will be caused to the

plaintiffs, on the contrary, the defendants will not be put to any loss or hardship.

**12.** From the above discussion, it becomes clear that the plaintiff n.1 has established prima-facie case and she is entitled to the equitable relief of temporary injunction and as such, the balance of convenience tilts in her favour. Therefore, I have arrived at the conclusion of answering points No.1 to 3 in the affirmative.

13. **Point No.4:** In view of my discussion made supra, I proceed to pass the following:

### **ORDER**

I.A.No.2 filed by the plaintiff no.1 under Order 39 Rules 1 and 2 of the Code of Civil Procedure, is hereby allowed.

Consequently, issue temporary injunction restraining the defendant no.2 and 4 to 9 from alienating the suit schedule B properties i.e., item no.1 to 3 and suit schedule house and open site properties i.e., item no.1 to 3 till the disposal of the suit.

Under the facts and circumstances of the case, no order as to costs.

(Directly I have typed on my laptop, corrected and then pronounced by me in the open Court on this the 10<sup>th</sup> day of July, 2023.)

**(Hanamantarao R.Kulkarni)**  
**Senior Civil Judge, Hunagund.**