

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.101/2023

Dated this the 31st day of January, 2024

1. Smt.Mallamma w/o Shivabasappa Hugar and others
...**Plaintiffs**

-Versus-

1. Jagadish s/o Basappa Hugar and others
... **Defendants**

I.A. No.I

1. Basavaraj s/o Shivabasappa Hugar
...**Applicant/
Plaintiff no.4**

-Versus-

1. Jagadish s/o Basappa Hugar
2. Basappa s/o Mallappa Hugar
...**Opponents/
Defendant no.1 and 2**

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

(By **Sri.R.S.B.**, Advocate for the defendant no.1 and 2)

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ORDER ON I.A. NO. I

1. I.A.No.I is filed by the plaintiff n.4 under Order 39 Rules 1 and 2 of the Code of Civil Procedure, seeking to restrain the defendant no.1 and 2 or their agents, henchmen from excavating the sand in the suit landed properties Sl.NO.1 and 3 i.e., S.No.24/1B and S.No.24/3B of Karadi village till the disposal of the suit.

2. In spite of giving sufficient time, the learned Counsel for the defendant no.1 and 2 has not filed the objections to the said application. Hence, the objections to the said application are taken as not filed which is evident in the order sheet dated 20/11/2023.

3. I have heard the learned Counsel for the plaintiffs on I.A.No.I. The defendant no.1 and 2 have not filed their objections to the said application. Hence, their arguments on the application is taken as not addressed which is evident in the order sheet dated 22/01/2024.

4. On perusal of the records of the case, the following points would emerge for my consideration:

1. Whether the plaintiff no.4 has made out a prima-facie case?
2. Whether the balance of convenience tilts in favour of the plaintiff no.4?
3. Whether the plaintiff no.4 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 negative.
2. in the negative.
3. in the negative.
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.I, it is stated by the plaintiff no.4 that he has filed the suit for declaration and permanent injunction as well as cancellation of gift deed against the defendants. He has further stated that the defendants are ready and are in hurry mood to cause the loss to the plaintiffs and intentionally they are ready to start

the excavating work illegally in the said suit properties and if the defendants will excavate the sand from the said suit lands, the very purpose of suit is frustrated and agricultural lands will lose its fertility and in future it will become a Kharab lands and can't do agricultural works in the said lands and if this application is not allowed he will be put to untold hardship which cannot be compensated in terms of money. Hence, the instant application.

8. In view of the contentions put forth by both the plaintiff no.2, now, let me see as to whether the plaintiff no.4 has made out a prima facie case in his favour. It is pertinent to note that the plaintiff no.4 has stated that the defendant no.1 and 2 and their henchmen are excavating the sand in S.No.24/1B and S.No.24/3B of Karadi village and the learned Counsel for the plaintiffs has produced the photos. I have perused the photo copies and which depicts that some sand is excavating from the lands. I have perused the R/R of the suit properties bearing S.No.24/1B and 24/3B situated at Karadi village. S.No.24/1B situated at Karadi village is in the name of defendant no.1. S.No.24/3B situated at Karadi village is in the name of defendant no.3. The defendant no.1 and 3 are in the possession and enjoyment of the afore said suit lands. It is pertinent to note that the plaintiffs have filed the suit for declaration that they are the owners of the suit lands by way of legal heir ship. It is pertinent to note that the plaintiffs have to prove that they are the absolute owners of the suit properties and unless they prove the ownership on the suit properties, they are not entitled any reliefs on the suit properties. Prima facie it appears that the defendant no.1 and 3 are in the possession and enjoyment of the suit properties. Further, if this I.A. is allowed much loss will be caused to the defendant no.1 and 3, on the contrary, the plaintiffs will not be put to any loss or hardship.

9. From the above discussion, it becomes clear that the plaintiff no.4 has not established prima-facie case and the plaintiff no.4 is not entitled to the equitable relief of temporary injunction and as such, the

balance of convenience does not tilt in his favour in respect of the suit schedule properties. Therefore, I have arrived at the conclusion of answering points No.1 to 3 in the negative.

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

ORDER

I.A.No.I filed by the plaintiff no.4 under Order 39 Rules 1 and 2 of the Code of Civil Procedure, is hereby rejected.

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 **31st** day of **January, 2024**.)

(Hanamantarao R.Kulkarni)
Senior Civil Judge & JMFC,
Hunagund.