

IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC,
AT BANAHATTI.

DATED THIS THE 2nd DAY OF SEPTEMBER -2024.

Present: Sri. ASHAPPA, B.Com.,L.L.M.,
Senior Civil Judge & JMFC
Banahatti.

O.S.No.388/2022

Plaintiffs:

1. Tippanna S/o Basappa Kamannavar
and others

(Through **Sri V.A.B. Adv**)

-Versus -

Defendants:

1. Holeppa S/o Sangappa Kamannavar
and others

(Through Sri. **B.P.P. Adv**)

IA.NoI

Applicants :

Tippanna S/o Basappa Kamannavar
and others

-versus-

Opponents:

Holeppa S/o Sangappa Kamannavar
and others

ORDER

- 1.** This IA has filed by the plaintiffs under order 39 rule 1 & 2 of C.P.C, with a prayer to restrain the defendants from alienating or creating charge over suit land Sy.No.228/1 measuring 10 acres 00 guntas of Navalagi village, Tq: Rabakavi-Banahatti, till disposal of the suit
- 2.** The application supported with the affidavit of the plaintiff No.1, wherein it is stated that, they have filed the suit for partition and separate possession against the defendants claiming $\frac{1}{2}$ share in the suit property. It is further stated that, themselves and defendants are Hindu undivided joint family members and the suit schedule property is their ancestral and joint family property.

- 3.** It is further stated that, the common ancestor of plaintiffs and defendants namely Tippanna who purchased the said land in the year 1957 from Yallappa S/o Laxman Kadam under registered sale deed. During life time of said Tippanna, he was holding and cultivating the suit land along with other properties land Sy.No. 164/1B and land Sy.No. 101/5.
- 4.** It is stated the said Tippanna died on 10.07.1999. After death of said Tippanna, his daughters given up their rights in the suit lands in favour of sons of said Tippanna namely Gadigeppa and Sangappa and accordingly the suit land got transferred in the name of said Gadigeppa and Sangappa as per ME.No.7160. The said Gadigeppa and Sangappa sold their joint family property land Sy.No. 164/1B and land Sy.No. 101/5 of Navalagi village. The present suit land were jointly cultivating the said Gadigeppa and Sangappa during their life time.
- 5.** It is stated that, the defendant No. 1 to 3 given varadi before revenue authorities falsely and got mutated the suit land in their name without knowledge and behind the back of said

Gadigeppa and his family members. The defendants are not the exclusive owners of the suit property. The plaintiffs having equal rights over the said land. The plaintiffs and defendants are joint in possession over suit land. The plaintiffs requested the defendants to effect partition in the suit land but the defendants denied the share of the plaintiffs and therefore it resulted in filing the present suit as well as IA under reference.

- 6.** After service of suit summons, the defendants appeared through their counsel and resisted the claim of plaintiffs by filing written statement. Memo filed for treating of written statement as objection to IA No.I. Accordingly, the said memo was allowed.
- 7.** In the written statement, the contents of plaint averments are specifically denied. The relationship between the parties is admitted. It is stated that, the suit property has been purchased from joint family funds and sale deed got executed in the name Tippanna nominally. Since from the date of purchase, the entire joint family was in the possession and enjoyment till 2005. It is

further admitted that, the sisters of Gadigeppa and Sangappa were given up their rights in the suit land in favour of said Gadigeppa and Sangappa. It is denied that, the said Gadigeppa and Sangappa jointly sold out the land Sy.No.164/1B and land Sy.No.101/5 for their family necessities. But it is further explained that, the Gadigeppa has sold the said lands for his individual necessities without the consent of the Sangappa. It is denied that, the said Gadigeppa suffering from ill-health, under that time the suit land has been got mutated by filing varadi in the name of these defendants.

- 8.** It is further stated that, the said Gadigeppa being a manager of the family voluntarily made partition between himself and branch of defendants in presence of well wishers of the villagers on 01.04.2005. A memorandum of partition deed was written on 05.04.2005. As per partition the suit land allotted to the share of family of defendants. The land Sy.No. 228/1B of Navalagi village retained with said Gadigeppa. The said partition accepted by the parties and it was acted upon them as

well as revenue authorities. On the basis of said partition deed the revenue records have been changed and accordingly they were enjoying the same. It is stated these defendants are in the possession of suit land as absolute owners and the plaintiffs are having no share in the suit land. Knowingly, all these facts have filed present suit on false grounds to harass these defendants. It is stated there is no any cause of action to file present suit and therefore, sought to reject not only the present IA and also sought to dismiss the suit.

9. Heard both sides on IA.No.I.

10. The following points arise for consideration of this court are as under:-

POINTS

1. Whether the plaintiffs made out prima- facie case in their favour?
2. Whether the balance of convenience lies in favour of the plaintiffs?
3. Whether plaintiffs will be put to hardship and injury if order of Temporary injunction is not granted?
4. What Order?

11. Heard hearing both side and perused the materials placed on record.

12. My findings on the above points are as below:

Point No.1 :: **In the Affirmative**

Point No.2 :: **In the Affirmative**

Point No.3 :: **In the Affirmative**

Point No.4 :: As per final order
for the following:

R E A S O N S

13. POINT No.1: This is a suit for partition and separate possession filed against defendants seeking partition in the suit land Sy.No.228/1 measuring 10 acres 00 guntas situated at Navalagi village, Tq: Rabkavi- Banahatti. In the present application, the plaintiffs seek ad-interim relief to restrain the defendants from alienating, creating charge etc., over suit land, till disposal of the suit.

14. Plaintiffs claimed that, the suit land is ancestral and joint family property of themselves and defendants and they are having ½ share. The defendants refused to effect partition in the suit property and therefore filed present suit as well as IA under discussion.

15. Herein present IA, the plaintiffs seeking to grant temporary injunction against the defendants restraining them from alienating or creating charge over suit land, till disposal of the suit. The plaintiffs approached this court for the relief of temporary injunction under in the present I.A, they have to make out three principles for granting the temporary injunction i.e., plaintiffs have to make out a prima-facie case to go in to trial, balance of convenience lies in their favour and they have to establish that they are going to be irreparable loss or injury which cannot be compensated in terms of money if injunction is not granted.

16. As stated, the plaintiffs satisfy the court that, the dispute raised by them in the present case is bonafide dispute which needs to be investigation and decision on merits by this court. They must also establish that there is probability of plaintiffs being entitle the relief claimed by them in this suit. The burden is on the plaintiffs to prove and establish that there is a prima-facie case in their favour.

17. Keeping above principle in the mind, I have perused the material on record. In support of the claim, the plaintiffs produced the documents, i.e revenue records from 1975-76 to till date, copy of mutation extract and other supporting

documents, tax paid receipts, death certificates, cc of sale deed, etc.,. On perusal of records of rights of suit land, they are clearly goes to show that, the name of common ancestors of plaintiffs and defendants namely Tippanna S/o Gadigeppa was appeared. The copy of sale deed produced herein also reveals that, the suit land was purchased by the said Tippanna from its previous owner. It is admitted fact that, the said Tipanna died leaving behind his wife, sons and daughters. After death os said Tippanna, the suit land got mutated in the name of Gadigeppa and Sangappa jointly as per ME.No. 428 and accordingly the name of said Gadigeppa and Sangappa came to be entered in the revenue records as joint owners and possessors which could be seen from the records of rights for the year 1995-96 to till 2003-04. The revenue records also reveals that, after death of said Sangappa, the suit land got mutated in the name of said Gadigeppa and these defendants jointly which could be seen from the RTC for the year 2004-05. Thereafter the name of said Gadigeppa has been removed from the RTC as per MR No. 143/2005-06 dated 30.11.2005 on the basis of partition. At present the suit land is standing in the name of defendants jointly. The acquisition of suit land from their ancestor is not disputed by the defendants. On perusal of written statement, it is not denied that, the suit land is not the ancestral property of the parties

to the suit nor it was acquired from their ancestor namely Tippianna. Only contention of the defendants that, there was already partition has been taken place on 01.04.2005 in between the Gadigeppa and these defendants in presence of well wishers of the villagers and a memorandum of partition deed written on 05.04.2005. As per said partition the suit land allotted to share of defendants and another land allotted to the share of Gadigeppa. It is further contention of the defendants that, on the basis of partition, the revenue records were implemented and defendants are the absolute owners and in possession and these plaintiffs are having no any rights. Though the defendants contended the suit land allotted to their share but in order to substantiate the said contention no any material placed by the defendants. Even there is no any record show that there was already partition has been taken place and the land allotted to the defendants and none suited land allotted to the share of Gadigeppa. No such reference made in the mutation extract which was produced by the plaintiffs. The plaintiffs produced the certified copies of documents i.e application along with partition deed filed by the defendants before revenue authorities. Admittedly there is no any registered partition deed executed in between the parties. Therefore, at this stage the court can not held that, there was a partition has been taken place and the

present suit property allotted to share of defendants. Though the name of defendants appearing in the RTC as joint owners and possessors but they are not the absolute owners and the name of defendants appearing in the RTC nominally. The revenue documents are not the title documents. As per section 17 of registration Act, if the property is more than value of Rs. 100/- such property shall be transferred by way of registered instrument. So, herein the case also the suit land got transferred in the name of defendants without any registered instrument. As stated above, the defendants not denied that the property is not their ancestral property. The records of rights and other material prima facie shows that, suit land acquired from the ancestor of the plaintiffs and defendants. There are no supporting material on records to show there was a partition has been effected in between the plaintiffs and defendants and this suit land allotted to the defendants. Hence, the defendants failed to establish the factum of partition and allotment of share as alleged.

18. The plaintiffs contended that, taking the name of defendants in the records of rights, they are denying the share of plaintiffs in the suit land. The suit land is standing in the name of defendants jointly and there is no any material at this to state to conclude that the defendants are exclusive

owners of the suit land. The plaintiffs makes allegations that, the defendants not ready to effect partition and they are having $\frac{1}{2}$ share. If the defendants alienates the suit land as stated in the IA under reference then the possession of plaintiffs can not be protect and it will effect on their valuable rights for which it can not be compensated in terms of money. As contended by the defendants that, the partition has been effected in between the parties to the suit and therefore, it appears that plaintiffs have got good case to go for trial and to prove as per their contention. Thus, the plaintiffs have show the prima facie case in their favour. Accordingly, without much discussion **Point No.1 is answered in the Affirmative.**

19. Points No.2 & 3: As both points are interconnected, they are taken up for discussion together in order to avoid repetition of facts and circumstances of the case.

20. As discussed above, the plaintiffs showed a prima facie case in their favour. If the temporary injunction is not granted, definitely there is a chance of alienating or mortgaging the suit lands to others by the defendants, taking their names in the revenue records. If the suit lands alienated, it will effect on the rights of the plaintiffs and therefore the balance of convenience lies in favour of plaintiffs and they will sustained the irreparable loss then the defendants if injunction is not

granted. Thus, the plaintiffs have show even other two ingredients in their favour. **Accordingly, Point No.2 and 3 are answered in the Affirmative.**

21. Point No.4: In view of the above said discussions and reasoning, the following:

O R D E R

The I.A.No.1 filed by plaintiffs U/o.39 rules 1 and 2 of C.P.C is here by allowed.

Defendants or their agents, servants or any other persons claiming through them are hereby temporarily restrained from alienating or creating charge over suit land Sy.No.228/1 measuring 10 acres 00 guntas of Navalagi village, Tq: Rabkavi-Banahatti, till disposal of the suit.

Parties to bear their own cost.

(Typed by the Stenographer on my dictation directly on computer then corrected, signed by me, and then pronounced in the open Court on this **2nd day of September -2024**)

(Sri. ASHAPPA)
Senior Civil Judge & JMFC.,
Banahatti.